

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

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ANNESSA LEWIS

)

VS

)

CASE NO: 1:14-CV-205

BELLOWS FALLS CONGREGATION OF )

JEHOVAH'S WITNESSES, BELLOWS

FALLS, VERMONT, INC., ET AL )

MOTION HEARING

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)

BEFORE: HONORABLE J. GARVAN MURTHA  
SENIOR JUDGE

APPEARANCES: DEVIN MILES STOREY, ESQUIRE  
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(Appearances Continued)

DATE: January 5, 2016

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1 (The Court opened at 10:35 a.m.)

2 THE CLERK: This is civil docket number 14-cv-205,  
3 Annessa Lewis versus Bellows Falls Congregation of the  
4 Jehovah's Witnesses of Bellows Falls, Watchtower Bible and  
5 Tract Society of New York, Inc. and Norton True. Also we're  
6 here in In re: Christian Congregation of Jehovah's  
7 Witnesses.

8 Present in the courtroom representing the  
9 plaintiff are Attorneys Jerome O'Neill and Devin Storey.  
10 Also in the courtroom representing defendants are Attorneys  
11 Jennifer McDonald, Pietro Lynn, Walter Judge, Junior,  
12 Barbara Blackman and Ian Carleton. Representing defendant  
13 True are Attorney Will Kraham and Mr. Anthes.

14 THE COURT: And we are hearing various motions.

15 THE CLERK: And we are here on a motion hearing,  
16 exactly. Excuse me.

17 THE COURT: Mr. Lynn, do you have something to say  
18 or --

19 MR. LYNN: Well, obviously it was more in the way  
20 of question and suggestion. I know there are a series --

21 THE COURT: Well, why don't you let me go first.

22 MR. LYNN: Glad to. Thank you, Your Honor.

23 THE COURT: Welcome all, first of all. I see a  
24 number of very prominent attorneys from Vermont and  
25 elsewhere I guess. I was just reviewing the new amendments

1 to the civil rules, which call for, it seems, more  
2 cooperation among parties and the Court. And also calls for  
3 scheduling orders and that sort of thing, which, at least I  
4 don't follow the rules I guess, in the sense that we don't  
5 have these conferences early on. And maybe I should change.  
6 I don't know about the other judges in Vermont, whether they  
7 are following the rules in the sense that it calls for  
8 conferences and hearings instead of just filing the  
9 discovery, the discovery schedule, which is then approved by  
10 the Court. And then there's no real contact normally  
11 between the judge and the parties until something develops.  
12 And I guess this is a development.

13 I am going to deal with all the motions this  
14 morning. And I'll take them in the order that I reviewed  
15 them. And, frankly, I spent a lot of time reviewing these,  
16 which is the first time in a while that I've spent so much  
17 time going through discovery and trying to figure out whose  
18 asking for what and what objections there are and why.

19 So, certainly I will hear some arguments from all  
20 of you on the various motions. I'm not saying that the time  
21 will be limited, but it may be limited depending on how long  
22 you go at it.

23 Again, bear in mind, that I spent, I don't know  
24 how many hours, going through all these things and have some  
25 preliminary ideas of how I'm going to rule.

1           So, you want to say something else other than, Mr.  
2     Lynn?

3           MR. LYNN: No, Your Honor. I was, what I was  
4     going to ask the Court is given the volume of motions and  
5     what seems to be at least a limited amount of time, how the  
6     Court wanted to apportion the time as between the two  
7     parties and which motions would go first.

8           THE COURT: Well, I've decided which ones go  
9     first. And, frankly, I will apportion the time. If I feel  
10    people are speaking too long I'll tell them.

11          MR. LYNN: Thank you, Your Honor.

12          THE COURT: Okay. So, again, I've put these in  
13    order perhaps the way that I think they should be dealt  
14    with. You may not agree with that, but the first motion I'd  
15    like to hear is the plaintiff's motion to compel Watchtower  
16    to provide documents requested in plaintiff's first request  
17    for production.

18                 And that includes, as I see it, document 69, which  
19    was filed on October 13 of last year. And that included  
20    69-1, which was the specific verbatim listing of each item  
21    sought, which is dated September 16. And also include  
22    document 69-3 which is, they are all exhibits for the  
23    plaintiff's motion, but that is Watchtower's objections and  
24    responses to requests for production. And also includes  
25    69-4, which was or is defendant's, defendant Watchtower's

1 privilege log dated September 16 of '15.

2 And then there is a document 8-4, which is  
3 Watchtower's opposition to the motion and 92, which is  
4 plaintiff's reply.

5 In addition, on December 17 of last year, there  
6 was a letter from Mr. Lynn which enclosed certain documents  
7 for review by the Court. And those were documents two  
8 through four, five through seven, eight through 10 and 17  
9 through, 17 and 18 on the privilege log by Watchtower.

10 So, just as a preliminary statement, it appears to  
11 me anyway that the documents at issue in this motion are  
12 either all listed or 99 percent listed on the privilege log.  
13 So if I'm wrong, let me know that, but the ruling that I  
14 will make will concern the privilege log and whether or not  
15 it should be turned over or not, whether the documents  
16 should be turned over.

17 I am seriously contemplating and will likely order  
18 that there be a confidentiality agreement between the  
19 parties, some, if not a majority of these documents. So  
20 I'll just give you that preliminary statement, that  
21 preliminary thought.

22 So, I guess Mr. O'Neill you are the plaintiff.  
23 And it's your motion. If you want to go ahead. I don't  
24 know, maybe Mr. Zalkin who is going to argue it?

25 MR. O'NEILL: Devin Storey is here with me, Your

1 Honor. And, Mr. Storey is --

2 THE COURT: Mr. Storey. I'm sorry.

3 MR. O'NEILL: That's all right. He is going to  
4 argue the substantive motions related to the various motions  
5 to compel that were filed by our side.

6 THE COURT: Okay. All right. So, Mr. Storey?

7 MR. STOREY: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. STOREY: May it please the Court. So with  
10 respect to this motion, it seems that the central objection  
11 that Watchtower has made is the clergy penitent privilege or  
12 the religious privilege. And there are three topical  
13 reasons why the assertion of privilege fails.

14 And the first is on a broad level. Watchtower  
15 has, and the Jehovah's Witnesses have a very regimented way  
16 of responding to childhood sexual abuse allegations. There  
17 are policies and practices in place. And because of those  
18 policies information of this type is distributed within the  
19 organization to various people and can never satisfy the  
20 requirements of confidentiality required for application of  
21 the privilege. So on a broad level documents of this type  
22 cannot satisfy the privilege.

23 Secondly, on a case specific level, with  
24 respect to Norton True, none of the documents can satisfy  
25 the requirements of confidentiality or the requirement that

1 there was a spiritual -- a communication seeking spiritual  
2 advice.

3 This is not a circumstance where a penitent came  
4 to a clergyman and made a confession. This is a  
5 circumstance where a person's accused of a heinous  
6 wrongdoing. He was called before the elders and he denied  
7 doing anything. So there is no communication seeking  
8 spiritual advice.

9 And, third, on a document by document specific  
10 level, going through these requests it's clear that some of  
11 these documents don't contain any communication from a  
12 penitent to a member of the clergy and others, pardon me,  
13 Your Honor, there's been no effort to establish the actual  
14 underlying privacy or confidentiality of any communication  
15 from a member -- to a member of the clergy.

16 So looking first generally at the religious  
17 privilege, a person has a privilege to refuse to disclose  
18 and to prevent another from disclosing a confidential  
19 communication by the person made to a member of the clergy  
20 in his professional character as a spiritual adviser. And a  
21 confidential communication is made privately and not  
22 intended for further disclosure except to other persons  
23 present in furtherance of the purpose of the communication.  
24 It is the privilege proponent's obligation to demonstrate  
25 application of the privilege and their burden.



1           So on the broad level I mentioned before, there  
2 are a number of ways that a member of the clergy can learn  
3 of a molestation allegation. A victim can come forward and  
4 make a complaint seeking that some action be done, a parent  
5 can do the same. Some other witness could observe  
6 something, come to the elders and say, hey, I think you  
7 better look into this, this person's a threat. There could  
8 be a call from the police or a custody battle or a newspaper  
9 article. A spouse of a molester could come forward and  
10 state some concerns.

11           In any of those circumstances, someone's coming  
12 forward and asking that action be taken. It's not a  
13 communication to an Elder seeking spiritual advice. And  
14 that's a fundamental problem in the showing that's been made  
15 by the defendants. There's no showing whatsoever as to why  
16 these particular documents or these particular  
17 communications contained within these documents were brought  
18 to the attention of the Elders.

19           There's no showing that there was a request for  
20 spiritual advice. And because of that, the assertion of  
21 privilege fails regardless.

22           The molestation complaints within the Jehovah's  
23 Witnesses are subject to, regardless of the reason that  
24 someone came forward to an Elder, are subject to potentially  
25 broad disclosure.

1           Now, when a complaint comes in the first thing  
2   that Elder does who gets it is call the legal department and  
3   ask for legal advice. Am I a mandatory reporter? If so,  
4   the person calls the police. If not, the person still has  
5   complete discretion to call the police if they so choose.

6           Now, the next thing that happens is the Elders  
7   will convene and they'll discuss the allegations. They'll  
8   assign two people to investigate. Those Elders will go out,  
9   they'll talk to the accused, they'll talk to the accuser,  
10   they'll speak to anyone else with relevant information, come  
11   back, report to the body of Elders. And if there's enough  
12   evidence they'll form a judicial committee, which involves a  
13   third Elder. They'll go out and they'll meet with the  
14   accused again and determine what type of censure to impose.

15           After that there's the possibility that the  
16   accused may appeal. If the accused appeals another Elder  
17   called the circuit overseer who oversees 20 to 25  
18   congregations of Jehovah's Witnesses in a geographic area  
19   will be contacted. He'll assemble an appeals committee from  
20   three separate Elders in different congregations within that  
21   circuit to review the material. Then the Service Department  
22   at Watchtower will be contacted.

23           So, once the complaint comes in there are any  
24   number of individuals who may be given access to the  
25   allegedly confidential information. And in the event that

1 the person is dis-fellowshipped or excommunicated they can  
2 seek reinstatement. And that may happen four or five years  
3 down the road. And if it does, you might have different  
4 Elders in the congregation who are going to be given access  
5 to all the materials to determine whether that person is  
6 eligible for reinstatement.

7 The person moves to another congregation, pardon  
8 me, the person moves to another congregation a letter of  
9 introduction will be written. And, again, that same  
10 allegedly confidential information will be disseminated to  
11 others.

12 So these policies just don't allow for sufficient  
13 confidentiality of documents or statements dealing with  
14 childhood sexual abuse to qualify for privilege.

15 Now, on the case specific level dealing with  
16 Norton True, here we have a circumstance where my client's  
17 mother came forward and made a complaint. She came forward  
18 to the Elders and said Norton True molested my daughters.  
19 And at that point there was investigation, there were  
20 discussions, there were communications. But in the whole,  
21 pardon me, Norton True didn't initiate that. He didn't come  
22 forward seeking spiritual advice. Instead, he got called  
23 before the Elders. He answered their questions with  
24 denials.

25 So in that circumstance there was no communication

1 seeking spiritual advice, which is a direct requirement of  
2 the statute and which is missing. So, again, on that level,  
3 there is no confidentiality and no privilege.

4 And then in looking at the particular documents at  
5 issue, a number of those documents are what are called S2  
6 forms. That's documents, two, three, four, eight and 18.  
7 And those documents are, they are administrative documents  
8 where the local congregation will send Watchtower a report  
9 and say, hey, we think that, you know, member one and member  
10 two and member three meet the requirements for appointments  
11 as a Ministerial Servant or Elder.

12 And in putting that together what will happen is  
13 the Elders will put down their thoughts. Say, this person  
14 seems to meet the requirements because. Those are all the  
15 impressions of the individual Elders stating why the person  
16 meets the requirements or not. There is no communication  
17 from the individual to the Elders that's being communicated  
18 on to Watchtower. So in the absence of a communication to a  
19 member of the clergy there's no privilege.

20 Documents 11, 12, 13, 14, 15 and 16 all involve  
21 molestation allegations. And for the reasons discussed  
22 those, pardon me, those don't meet the requirements of the  
23 statute.

24 So for all those reasons the clergy penitent  
25 privilege or the religious privilege isn't applicable to

1 these documents or this type of document.

2 Now, the defendants also argue that there is a  
3 First Amendment privilege or entitlement to refuse to  
4 produce documents in discovery. And they base that  
5 primarily on a case called Serbian Eastern Orthodox Diocese  
6 versus Milivojevich. In that case we got a circumstance  
7 where Milivojevich had been the bishop of the diocese. He  
8 had been removed. And was suing to be reinstated. And it  
9 was effectively a -- it was a lawsuit over whose the bishop  
10 and who has control of the diocese's assets.

11 And the Court in that case said, look, we can't  
12 get involved with that. That's a Supreme Court case. We  
13 can't get involved with that. We can't determine whose the  
14 proper bishop of a diocese. That's not for us.

15 But those cases and the cases that similarly  
16 determine that the church shouldn't get -- the Court  
17 shouldn't get involved in church property disputes have been  
18 distinguished in cases of this nature repeatedly by courts  
19 that have had to deal with this issue.

20 And the courts have said, look, this isn't, you  
21 know, a discovery issue like we've got here. It doesn't  
22 decide any point of dogma. It doesn't decide whose going to  
23 be a bishop. It doesn't decide who can be a member or who  
24 can't. All it does is require that certain documents in the  
25 possession of the defendant be produced. And that doesn't

1 in any way implicate the First Amendment. So that the  
2 strong weight of authority that we cited in our briefs  
3 indicates that there is no legitimate First Amendment issue  
4 here.

5 Other than that, the defendants have argued that  
6 there are third party privacy issues at issue here. And the  
7 glaring one is the privacy rights of any individual victims  
8 that are identified in these documents. And we recognize  
9 that that exists. And, you know, we'd recommend that the  
10 protective order that the Court had mentioned earlier would  
11 be an adequate way of protecting those interests.

12 To the extent that there are others that the  
13 defendants have indicated have privacy interests, such as  
14 Mr. True presumably, also the Elders that were involved with  
15 the congregations involved, any interests there are  
16 certainly subordinate to the plaintiff's need to get these  
17 documents and to get the information in the defendant's  
18 possession.

19 So if the Court were to issue a protective order I  
20 think all of those concerns could be adequately addressed  
21 while plaintiff would still be entitled to the information  
22 that she needs.

23 THE COURT: Well, the normal procedure is for the  
24 parties to put together a protective order for approval by  
25 the Court. So you think that's possible?

1           MR. STOREY: Well, with the Court's comments this  
2 morning that a protective order is appropriate to your eyes,  
3 yes, I think we can do that, Your Honor.

4           THE COURT: And do you agree that the documents  
5 you seek are all on the privilege log or is there more?

6           MR. STOREY: There are some other documents, there  
7 are other categories we've requested. For instance, there's  
8 a type of document, it's called a Body of Elders Letter.  
9 And these are letters that Watchtower sent out. They are  
10 policy letters that go out to the congregations and are to  
11 be followed.

12           And we've asked for those. And we had butted  
13 heads against the defendant a little bit on this in that  
14 they had offered to produce certain of them if we agreed to  
15 a protective order. We had, A., not wanted a protective  
16 order and, B., we had wanted a greater sample than they have  
17 offered.

18           Effectively what these documents are -- some of  
19 them are going to deal specifically with child molestation  
20 or how a judicial committee works. And the defendants have  
21 offered to produce those subject to a protective order. But  
22 others are going to deal with Watchtower's ability to  
23 control the congregation and what happens at the  
24 congregation level, which ultimately we feel is going to be  
25 very relevant to an agency issue that's going to come up

1 later in this case. And that's the reason that we've  
2 requested those documents.

3 THE COURT: So, are those mentioned, I'm looking  
4 at the motion to compel Bellows Falls Congregation.  
5 Unfortunately, I don't have it attached to the Watchtower  
6 one. But it appears to be request number 39, which talks  
7 about July 1, 1989 letter to all bodies of Elders and so  
8 forth?

9 MR. STOREY: Yes, Your Honor.

10 THE COURT: So, that's all except for those items  
11 that are on the privilege log?

12 MR. STOREY: No. There's a couple other things.  
13 We had requested that Watchtower produce a document called  
14 Branch Organization. And Branch Organization, and it's also  
15 in the moving papers, this is a document that's used by all  
16 branches of Jehovah's Witnesses to govern how they function  
17 at the branch level, which is effectively the national  
18 level.

19 And we've requested this information primarily,  
20 A., as it relates to the question of control for an agency  
21 issue later. And, B., for punitive damages. Ultimately we  
22 are going to claim in this case that the governing body of  
23 Jehovah's Witnesses who formulated their policies acted  
24 maliciously and recklessly. And what we expect to see from  
25 the defendants is that the governing body is not in any way



1 related to Watchtower. We think this document will  
2 establish contrary. So we've requested that.

3 THE COURT: Do you know what request that is?

4 MR. STOREY: Pardon me?

5 THE COURT: Do you know which request that is?

6 MR. STOREY: I can get that for you in just a  
7 second, Your Honor. And then the, the other thing that's in  
8 the motion is also the subject of the protective orders,  
9 which are the institutional awareness documents. So we had,  
10 that was request 65 and 67.

11 THE COURT: Yes, okay. That's right.

12 MR. STOREY: So we can take care of that on the  
13 other motion.

14 THE COURT: Exactly.

15 MR. STOREY: So that's --

16 THE COURT: Okay.

17 MR. STOREY: Thank you, Your Honor.

18 THE COURT: Thank you. Mr. Lynn?

19 MR. LYNN: Thank you, Your Honor. Good morning.

20 THE COURT: Good morning.

21 MR. LYNN: Bear with me for just a second. So,  
22 Judge, I gather, I don't want to misspeak, but I gather that  
23 I'm here now to talk about the documents in the privilege  
24 log, and we'll get to the other documents that were the  
25 subject of the motion for a protective order when that issue

1 comes up?

2 THE COURT: Correct.

3 MR. LYNN: Thank you, Your Honor. Well, Judge, I,  
4 of course, listened to the argument that was being raised  
5 around the issue of the privilege. And I would remind the  
6 Court that in applying a Vermont privilege it's not a bad  
7 starting point to look at what the privilege is called.  
8 It's called a religious privilege. And that's under Rule  
9 505.

10 And so, Judge, let me back up for a moment and  
11 talk about, first of all, what this case is about. The  
12 claim here in this case is that Annessa Lewis sometime in  
13 either 1992 or '93 was inappropriately touched on the chest  
14 at Norton True's house, not in the Kingdom Hall, not in  
15 connection with any Jehovah's Witness sponsored event. And  
16 that there was disclosure of this some years later, '94,  
17 '95.

18 And upon disclosure that certain documents were  
19 created, some of those documents are now in the Court's  
20 possession. The claims for liability that remain after the  
21 motions to dismiss are two-fold. The first is that Mr. True  
22 was the agent of Watchtower. The second is that somehow  
23 there was, and the allegation in the complaint for negligent  
24 undertaking was that there were policies and procedures in  
25 place for zealous protection of members of the congregation

1 against known child molesters. And not that there was  
2 reliance on that, the Court specifically excluded that claim  
3 because it wasn't alleged, but that by virtue of some  
4 negligent conduct it increased the danger present to  
5 Ms. Lewis at that time. And I think it's important to  
6 remember that in the context of what discovery is relevant  
7 and what privileges ought to be upheld by the Court.

8 So going back to this issue of religious  
9 privilege, Rule 505, the language -- I hesitate to do this  
10 Judge, having heard that you spent a lot of time with these  
11 issues, but I'll remind the Court any way, the privilege --

12 THE COURT: I don't think you have to remind me  
13 about the language. I'm well aware of it.

14 MR. LYNN: All right. So, Judge, the issue here  
15 is what was the purpose of this communication between the  
16 Elders at the Bellows Falls congregation and the Elders at  
17 Watchtower.

18 And, Your Honor, I think it's important to  
19 remember that the Elders at the Bellows Falls Congregation  
20 are what I would characterize as very part-time. These are  
21 not priests or ministers whose full-time job is to engage in  
22 spiritual guidance and to be ministers or priests for the  
23 congregation. These are members of the community who have  
24 jobs like everybody else and who find and devote the time  
25 necessary to be Elders in their congregation.

1           And so, of course, one of the procedures that  
2 exist when there are these kinds of very serious allegations  
3 of sinful behavior is to seek guidance from the more  
4 full-time Elders at Watchtower around how ecclesiastically  
5 to handle those kinds of allegations.

6           And we don't dispute that it sometimes triggers  
7 investigations and sometimes that it triggers judicial  
8 committees, but these judicial committees are all internal  
9 ecclesiastical organizations and they are purely spiritual  
10 in nature. They have no authority civilly or criminally in  
11 the State of Vermont, but purely are church functions.

12           And so what we would suggest to you, Your Honor,  
13 is that any documents that are generated in connection with  
14 those communications between the Elders on the one hand in  
15 Bellows Falls seeking guidance on how spiritually to deal  
16 with an issue fall perfectly within the confines of Rule  
17 505.

18           THE COURT: What about the confidentiality part of  
19 that?

20           MR. LYNN: Well, I think that we have presented  
21 information through the affidavits that were appended to our  
22 motion for a protective order that indicates that, in fact,  
23 there is an expectation that this is confidential, that it  
24 will remain within the organization. People are not at  
25 liberty to go into the community at large and talk about

1 these issues.

2           And that is why I would argue, Your Honor, that it  
3 is confidential. What we haven't heard from Mr. Storey, and  
4 there is no argument, is that we generally tell people, in  
5 fact, what you heard from Mr. Storey is that when these  
6 communications are made, the very first thing that is done  
7 is that the legal department, and we've asserted an  
8 attorney-client privilege for those communications, deals  
9 with the question of whether the people bringing the report  
10 are mandatory reporters under that state's laws and whether  
11 there's a privilege that would prevent them from discussing  
12 that information.

13           And so, Your Honor, absent that kind of statutory  
14 mandatory reporter requirement then the information is kept  
15 within the organization.

16           Now, the victims, we agree that there's nothing  
17 that would prevent others who are not involved in those  
18 confidential communications to report that to the  
19 authorities. But, again, what we're looking at now  
20 specifically are those communications made by the Elders in  
21 Bellows Falls to the Elders at Watchtower.

22           THE COURT: Well, I guess I don't understand, as I  
23 think was, Mr. Storey said, is that there are communications  
24 certainly about the sexual abuse perhaps by alleged victims  
25 or their family to Bellows Falls. So how are those

1 considered confidential communications to an ecclesiastical  
2 person?

3 MR. LYNN: Well, again, the communication, I'm  
4 sorry, Your Honor, I didn't mean to interrupt you.

5 The communication within the church, of course, is  
6 also confidential. But the communicant, the one providing  
7 the information, is the one who has the right to waive that  
8 privilege. Any person is entitled, if they want, to tell  
9 the authorities, or whomever they like, about the alleged  
10 abuse or sinful conduct, whatever that is. But what we're  
11 seeing in this instance is the further communication by the  
12 Elders internally within the organization seeking guidance  
13 and advice on how spiritually to handle allegations, whether  
14 it's abuse or some other serious sin.

15 THE COURT: Well, it's more than spiritually isn't  
16 it? I mean, they go to the legal department. They are  
17 asking for legal advice.

18 MR. LYNN: Well, Your Honor, they go to the legal  
19 department, as Mr. Storey said, for one specific purpose.  
20 And that is to determine whether there is a requirement that  
21 it be reported under the various laws of the various states.  
22 There has to be an interpretation as to who is a mandatory  
23 reporter. But this is -- those documents are different  
24 documents. Those are documents where Your Honor we believe  
25 that there is an attorney-client privilege.

1           The first step in this analysis for some of these  
2 documents is, is there a religious privilege. And the  
3 argument is, Your Honor, that those communications are being  
4 made solely for the purpose of seeking spiritual religious  
5 organizational advice on how to handle allegations of sin.

6           So, Your Honor, those are the arguments we would  
7 raise with respect to the documents where we have raised the  
8 religious privilege under Rule 505.

9           Now the attorney-client privilege, Your Honor,  
10 those, we believe that what we've heard from Mr. Storey and  
11 what you see in the pleadings is very clear, that when there  
12 are allegations of unlawful conduct that those are, those  
13 are brought to the lawyers. Determinations are made about  
14 what is disclosable or what is protected by privilege, who  
15 is a mandatory reporter, and that is classically information  
16 that comes within the context of attorney-client privilege.

17           THE COURT: You submitted those to me.

18           MR. LYNN: We did, Your Honor.

19           THE COURT: And I've looked at those. And I'm  
20 prepared to make rulings on them.

21           MR. LYNN: Thank you, Your Honor. We expected so.

22           And then, and then there is the other two  
23 privileges that we raised, and I guess calling a third party  
24 privacy privilege might be stretching it, but there is some,  
25 Your Honor, deep concern that this information be

1 disseminated in a public way, that these are allegations,  
2 there is no criminal public proceeding that we know of that  
3 goes to these issues.

4 In fact, I think as the Court is probably aware  
5 from the many pleadings submitted in this case, that there  
6 is not even a DCF registry entry for Mr. True. That he was  
7 removed from the registry after twice passing polygraph  
8 examinations.

9 And so we're concerned not only for him, but for  
10 others whose names are contained in these documents that  
11 they become public. And I'm pleased to hear there's now a  
12 willingness to agree to confidentiality. Up until this  
13 moment there has not been.

14 THE COURT: All right. And you are agreeable to  
15 that as well?

16 MR. LYNN: On those issues we are, Your Honor.  
17 Definitely.

18 The last issue is the First Amendment privilege.  
19 And, Judge, we cited a number of cases. But those cases  
20 that we've cited almost universally stand for the  
21 proposition that in this country there are, there is a  
22 status accorded to religious organizations where the state  
23 ought to tread carefully in trying to either force those  
24 organizations to do things that are not consistent with  
25 their religious beliefs or to force those organizations to



1 discourage information which is deeply sensitive and central  
2 to their religious tenets.

3 And so, Your Honor, we think that to the extent  
4 that this Court does not believe such a privilege exists, we  
5 believe that it does, but to the extent that this Court does  
6 not believe it exists that in any event those cases ought to  
7 inform its conduct or its decisions in this case around what  
8 information is ordered produced and which information is  
9 not.

10 THE COURT: Okay.

11 MR. LYNN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. STOREY: Your Honor, just very briefly in  
14 response. First, in following up on those particular  
15 requests that I had mentioned, the request for the Body of  
16 Elders letters was request 63. And the request for the  
17 branch organization was request 66.

18 THE COURT: And those are different from the other  
19 issue that we're going to be dealing with?

20 MR. STOREY: They are. They are.

21 Now, there was something that Mr. Lynn said. And  
22 he said there's an expectation that statements of this type  
23 would stay in the congregation. And I point to the language  
24 of the statute and say that's not enough. The language  
25 specifically says that there can be no disclosure to someone

1 not present except in furtherance of the purpose of the  
2 communication.

3 And we've discussed this investigation process,  
4 we've discussed the way that, you know, a person who moves  
5 on to a new congregation would have a letter of introduction  
6 written, discussions with the legal department. These are  
7 all for different purposes than the original communication  
8 would have been, which would have been either a  
9 communication seeking that some action be taken against a  
10 molester or that there be some vigilance or potentially that  
11 the molester himself had confessed.

12 But, you know, we've got a circumstance where the  
13 various multiple disclosures within the organization, and  
14 sometimes outside of the organization to authorities, are  
15 not made for the same purpose as the original communication.

16 And for that reason the argument that all of this  
17 is intended to stay in the congregation fails as a matter of  
18 law.

19 Now, there was something that was hammered pretty  
20 hard in the briefs from Watchtower and was alluded to, which  
21 is that these communications are from Elder to Elder seeking  
22 spiritual advice.

23 So, effectively what this argument wants to do is  
24 ignore where this information came from. For instance, if  
25 congregant A. comes to the Elder and says, hey, we think

1 that congregant B. is molesting a child, and the Elder calls  
2 the Service Department to discuss it. What you've heard is  
3 that because the Elder is seeking legal or seeking spiritual  
4 advice from Watchtower everything going back to the first  
5 communication is privileged.

6 Effectively what the defendant wants to do is give  
7 any Elder the ability to take unprivileged material and make  
8 it privileged simply by communicating it to the Watchtower.  
9 And that's antithetical to the confidentiality that's  
10 required by the statute for application of the privilege.

11 And, finally, with respect to the First Amendment  
12 issue, I quote to a case General Counsel and Finance and  
13 Administration with the United Methodist Church versus  
14 Superior Court. This is a case where Justice Rehnquist  
15 wrote an opinion serving as circuit judge. And he talked  
16 about this doctrine of ecclesiastical abstention.

17 And what he said was that these notions are quote,  
18 not applicable to purely secular disputes between third  
19 parties and a particular defendant albeit a religiously  
20 affiliated organization. And that's because, the reason for  
21 those First Amendment principles is to, quote, avoid a,  
22 quote, perceived danger that in resolving intra-church  
23 disputes the state will become entangled in essentially  
24 religious controversies or intervene on behalf of groups  
25 espousing particular doctrinal beliefs.

1           We have none of that here. We have a discovery  
2   dispute asking that documents be produced. The Court in no  
3   way is being asked to weigh in on the validity or  
4   appropriateness of those religious beliefs. As such, the  
5   First Amendment doesn't apply. Thank you, Your Honor.

6           THE COURT: Okay. Thank you.

7           MR. LYNN: Your Honor, if I could just briefly  
8   speak to 63 and 66 because I don't think that there was  
9   discussion about that up until this point why they ought to  
10   be produced.

11          THE COURT: Okay. Let me get them first then.

12          MR. LYNN: Yeah, please, Your Honor.

13          THE COURT: Okay. Is it, produce all Body of  
14   Elders's letters distributed by you between January 1, 1975  
15   and September 30, 2014? Is that the one you're talking  
16   about?

17          MR. LYNN: Yeah, that's the first one, Your Honor.

18          THE COURT: Okay. Go ahead.

19          MR. LYNN: I'll remind the Court that the  
20   allegations in this case have nothing to do with the year  
21   2014 or 2015 or, frankly, the 2000's at all. These are  
22   allegations that arose from a time in the 1990's. And  
23   you'll see in response to request for production number 63  
24   we offer, subject to confidentiality, to produce documents  
25   that at least have some relevance to this case, but we do

1 object as irrelevant documents that extend beyond  
2 December 31, 1996.

3 And so, Judge, by virtue of that December 31, 1996  
4 date, I think what we are contemplating is that we'll  
5 produce everything up and to and beyond the time of report  
6 to us of this abuse even though it was years before in '94  
7 and '95. But documents after that date have no bearing,  
8 Your Honor, on the allegations of liability or damages in  
9 this case.

10 And, likewise, you'll see in response to 66 --

11 THE COURT: That's about all Branch  
12 Organization -- all iterations of Branch Organization  
13 between 1990 and the present?

14 MR. LYNN: Yeah. And, Your Honor, again, you'll  
15 see that the objections that we raised to that are that it's  
16 not, it's not relevant to the allegations in this case, that  
17 it is far broader than what ought to be considered by the  
18 Court.

19 And let me remind the Court again, that what we're  
20 dealing with in this case is that there is, there was a  
21 policy of zealous supervision, zealous care for those who  
22 are known to be child molesters and that our conduct either  
23 pursuant or inconsistent with that policy led to the abuse  
24 by virtue of increasing the level of danger.

25 Those documents have nothing to do with that

1 theory of liability. The argument we've heard from counsel  
2 was that there are some documents they are seeking which  
3 will show that Mr. True was our agent. Your Honor, what is  
4 undisputed before the Court now is that Mr. True was not a  
5 ministerial servant. He was not an Elder within the  
6 organization. He was only, at the time of this alleged  
7 abuse, a member of the congregation. So any claim that he  
8 was our agent is tenuous at best, but these requests in 66  
9 go far beyond trying to establish that a ministerial servant  
10 or a member of the congregation is an agent of Watchtower.

11 THE COURT: And what about 69? Sixty-nine for you  
12 actually is about insurance policies, which I don't think is  
13 at issue or is it?

14 MR. LYNN: I don't believe so, Your Honor.

15 MR. STOREY: No, Your Honor, it's not.

16 THE COURT: So I guess it was 69 if it applies to  
17 the Bellows Falls Congregation. That was, right?

18 MR. STOREY: Yes, Your Honor.

19 THE COURT: We don't have an issue with 69?

20 MR. STOREY: We didn't raise that in our motion  
21 with respect to Bellows Falls, however.

22 THE COURT: I beg your pardon?

23 MR. STOREY: We didn't raise that in our motion  
24 with respect to Bellows Falls. So 69 shouldn't be at issue.

25 THE COURT: All right.

1 MR. STOREY: One brief thing.

2 THE COURT: Well, just so I'm clear, so we're only  
3 dealing -- outside of the privilege log we're only dealing  
4 with then 63 and 66?

5 MR. STOREY: Yes. Because 65 and 67 will be with  
6 the other motion.

7 THE COURT: Right. Okay. Sorry. Go ahead.

8 MR. STOREY: I'm sorry, Your Honor. Just one  
9 brief thing. Something that Mr. Lynn had said on rebuttal  
10 was that it's undisputed that Norton True was not a  
11 ministerial servant at the relevant time period. And that's  
12 not the case.

13 It's certainly not undisputed. We don't have any  
14 information, and they've refused to give us information, as  
15 to when he was and wasn't a ministerial servant. So it's  
16 not an undisputed issue, Your Honor.

17 MR. LYNN: Well, Your Honor, we know that the  
18 plaintiff's mother was a member of the church at that time.  
19 We know that this is an issue we put front and center in the  
20 pleadings to the Court. And we know that there is no  
21 factual information from the Court, nor could there ever be,  
22 that disputes the fact that he was not a ministerial servant  
23 at the time of this alleged abuse.

24 So just simply saying it is undisputed can't make  
25 it true. And, by the way, if they really had some serious

1 concern about whether these statements were true or not, I  
2 suspect we would have seen a discovery request somewhere  
3 along the line that sought to ferret out that issue and that  
4 is not the case.

5 So, Judge, it is undisputed on the record in this  
6 Court in this case that he was not a ministerial servant at  
7 the time.

8 What I would also say, Your Honor, as I look at  
9 66, and I want to be clear about this, the request is,  
10 please produce all iterations of branch organization in  
11 effect between 1990 and present. So, Your Honor, again,  
12 there is no relevance to that request and the theories of  
13 liability in this case. Branch organization doesn't let us  
14 know to any certainty whether Mr. True was an employee of  
15 Watchtower. Branch Organization Members doesn't tell us  
16 whether there was some policy of Bellows Falls that was not  
17 properly followed or was overzealously followed.

18 This is, Your Honor, a fishing expedition which is  
19 only illustrated by the fact that they are looking for those  
20 iterations all the way up to present.

21 THE COURT: Okay. I think we've covered that  
22 motion. Let me get myself oriented here again and we'll go  
23 on to the next one.

24 So, I think the next one is similar, but it  
25 involves the Bellows Falls Congregation. And that is



1 document 68 of 10-13-15, which is the plaintiff's motion to  
2 compel Bellows Falls Congregation to compel.

3 And, again, it seems to me perhaps there are a  
4 couple of others as has appeared now with Watchtower that  
5 weren't covered by the privilege log, but what I did is I  
6 went through the privilege log and compared it to the  
7 motion. And it appears that those documents are the ones at  
8 issue. Maybe some others, but I'll hear if there is.

9 So, why don't you go ahead again.

10 MR. STOREY: Your Honor, in the interest of  
11 brevity, I think the issues with respect to privilege and  
12 the First Amendment so heavily overlap what we've just  
13 argued. If we could just have Bellows Falls argue and I'll  
14 respond to anything they raise. There's nothing really  
15 further that I can add.

16 THE COURT: Okay. Do you think there are other  
17 documents though than the ones on the privilege log here?

18 MR. STOREY: Again, it's the same as with respect  
19 to Watchtower. We have asked for Watchtower to produce all  
20 Body of Elders letters it sent. We had asked Bellows Falls  
21 to produce Body of Elders letters it received. So they are  
22 going to be the same issues that were just discussed.  
23 There's nothing new or nothing different.

24 THE COURT: Do you know which request that is?

25 MR. STOREY: I can give that to you, Your Honor.

1           THE COURT: All right. Okay. So who is going to  
2 argue for Bellows Falls?

3           MS. McDONALD: Your Honor, and I agree with  
4 Attorney Storey, that the issues are extremely similar,  
5 although I would like to stress on behalf of the local  
6 congregation that our congregants, our Elders understood  
7 that when they were seeking spiritual advice from either the  
8 Elders in the local Congregation or seeking spiritual advice  
9 from the Service Department, that these communications will  
10 be confidential.

11           It's an extremely important part of the religion.  
12 It is understood by members of the religion. And Attorney  
13 Storey had mentioned earlier that the policies of the  
14 Jehovah's Witnesses religion don't lend themselves to our  
15 evidentiary protection of religious communications. And we  
16 certainly disagree with that point.

17           I would also like to draw the Court's attention to  
18 the fact that numerous documents in Bellows Falls' privilege  
19 log relate to individuals who are not parties to this  
20 action. They relate to, for example, plaintiff's father and  
21 spiritual advice that he received from our congregation, not  
22 in connection with the allegations in this case. They  
23 relate to other third parties.

24           These communications have nothing to do with this  
25 lawsuit. We shouldn't be required to produce that. That

1 also goes to the third party privacy that our congregation  
2 obviously is particularly concerned about.

3           Merely agreeing to a confidentiality order, while  
4 we would certainly do that, there are going to be names of  
5 individuals in here that have nothing to do with this case.  
6 And the confidentiality order, even if it's for attorney's  
7 eyes only, is certainly not going to be enough to cover  
8 that.

9           THE COURT: Why not?

10           MS. McDONALD: Because those individuals, even if  
11 they are going to be seen, their names are going to be seen  
12 by the attorneys in that case, they shouldn't be -- they  
13 shouldn't -- they are required to see or allowed to see that  
14 information about people who have nothing to do with this  
15 litigation, don't even know about the allegations of abuse,  
16 don't even know anything about this case, but are merely  
17 mentioned in the documents as third parties in reference to  
18 other things. I don't think a confidentiality order covers  
19 that particular third party privacy issue.

20           THE COURT: Well, I assume what they are looking  
21 for perhaps is other allegations against Mr. True?

22           MS. McDONALD: And we -- and that may be, but I'm  
23 also specifically speaking of third parties who have nothing  
24 to do with that. That there may be reference to names and  
25 other instances of seeking spiritual advice that are beyond

1 the scope of even abuse allegations.

2 I think --

3 THE COURT: Well, again, I think that's the  
4 purpose of a confidentiality order that it remains with the  
5 lawyers and unless there's a request that it be made public  
6 at a later time, for instance, at trial, or whenever, that's  
7 where it stays.

8 MS. McDONALD: Certainly, Your Honor. I think the  
9 other point, and this is what Attorney Lynn just mentioned,  
10 is that many of the documents, particularly in the Bellows  
11 Falls privilege log, are dated long after the period of the  
12 abuse. And given the status of the claims in this case the  
13 dates that the abuse is alleged to have occurred, which is  
14 between 1991 and 1994, we would certainly submit that any  
15 documents around that date, and certainly documents in the  
16 late '90's and well into the 2000's, should not be produced  
17 in this case and don't have anything to do with our clients.

18 THE COURT: Okay. Do you want to respond to that?

19 MR. STOREY: Yes, Your Honor. First, the request  
20 to Bellows Falls for the Body of Elders letters was request  
21 number 64.

22 THE COURT: I'm sorry?

23 MR. STOREY: Sixty-four, Your Honor. And just two  
24 quick points. One, Bellows Falls points out that some of  
25 these documents relate to plaintiff's father and they

1 question whether there's any relevance to those documents.  
2 The response would be that ultimately we're going to see  
3 arguments from the defendant trying to explain that any  
4 damages the plaintiffs suffered were not from molestation by  
5 True, but were from other things.

6 And without having seen this document, I don't  
7 know what's in it, but I think it's exceedingly likely that  
8 the subject of that document may be pointed to by the  
9 defendants as being a traumatic event or something of that  
10 sort that would have caused damages.

11 So we need to be able to see it to assess it and  
12 take it into account in our damages case in responding to  
13 arguments that we may seek from them.

14 And the second point would be that documents  
15 generated after 2000 or, pardon me, 1996 are irrelevant.

16 THE COURT: Are what?

17 MR. STOREY: Irrelevant. That seemed to be the  
18 thrust of the argument about documents generated in 2006 or  
19 2007. What we know from their arguments in the briefing is  
20 that there was a complaint obviously by each of my clients,  
21 Annessa and her sister. There was a complaint by another  
22 person who was a step-granddaughter of Norton True.

23 And in the discovery they've indicated that there  
24 was a complaint that came along by someone else. And there  
25 are letters in the privilege log from 2006, from 2012. I

1 don't know which of those deal with the complaint by the  
2 other individual, but there had been a report of molestation  
3 that came along regarding True at a later date.

4 And whether it provides notice or not or whether  
5 the events occurred before my clients were abused, whether  
6 the abuse occurred is going to be a disputed issue here.  
7 And having another person who can testify about that is  
8 going to be important.

9 You know, so documents generated, just because  
10 they are generated after the abuse in this case doesn't mean  
11 they don't contain relevant information or things that can  
12 relate to events that occurred earlier in time.

13 So I would ask that those documents be produced  
14 even if they were dated after 1996.

15 THE COURT: Okay.

16 MS. McDONALD: Your Honor, if I could just briefly  
17 address that last point? I think that Attorney Storey's  
18 argument highlights our concerns with third party privacy  
19 interests. Individuals, and we've mentioned this and this  
20 will come up in connection with the next motion, but names  
21 of individuals that are within documents that were generated  
22 in connection to seeking spiritual advice within our  
23 congregation, those names of those individuals, they have a  
24 right to privacy. They have a right not to be contacted by  
25 attorneys in connection with a lawsuit that is not related

1 to them, that they haven't brought.

2           They expected that when they sought spiritual  
3 advice from the Elders within their congregation that that  
4 advice would be confidential. I understand that's an  
5 argument, but they certainly did not expect to be contacted  
6 by plaintiff's counsel for a plaintiff they may not even  
7 themselves know. Particularly when, as Attorney Storey has  
8 mentioned, that maybe there are documents that were  
9 generated post-1996, those have nothing to do with notice  
10 pre-1991 when Miss Lewis' abuse is alleged to have occurred.

11           THE COURT: Okay. Thank you. Anything else?

12           MR. STOREY: No, Your Honor.

13           THE COURT: All right. So, I think the last group  
14 before I, well, there may be one after this too. Yes, there  
15 is. There's actually the motion by the defendants to have  
16 the plaintiff produce to them discovery. But before we get  
17 to that, I think there are three related motions about other  
18 discovery. I think there are two discovery issues in regard  
19 to both Watchtower, Bellows Falls and Mr. Carleton's client,  
20 the third party, non-party, I shouldn't say that. Anyway,  
21 the Christian Congregation of Jehovah's Witnesses.

22           So they are related. Maybe I'll give you  
23 Mr. Carleton an opportunity to speak. And as I say, they  
24 seem to involve the other two parties as well. So certainly  
25 I'll give everybody else a chance to speak if they wish to.

1 MR. CARLETON: Your Honor, in terms of sequency I  
2 think it probably makes sense to hear from the Watchtower  
3 and from Bellows Falls on the protective order issues first  
4 only because the, CCJW is easier to say than Christian  
5 Congregation of Jehovah's Witnesses. CCJW really is kind of  
6 like the stepchild argument in this entire protective order  
7 issue. It came into being only in 2001.

8 And so all the arguments that are pertinent up to  
9 2001 apply with greater force from 2001 going forward.

10 So, you know, I'm happy to speak on behalf of CCJW  
11 now, but I'm also -- my thought was that it makes more sense  
12 to hear about the first protective order concerns first.

13 THE COURT: Okay. If you don't want to speak  
14 first then I'll let somebody else do it.

15 MR. LYNN: May I, Your Honor?

16 THE COURT: You may.

17 MR. LYNN: Thank you.

18 THE COURT: So let me just set the record straight  
19 for my purposes as well.

20 MR. LYNN: Please do.

21 THE COURT: We're dealing with, in this case,  
22 document 70, which is your, it's defendant Watchtower's  
23 motion for a protective order. And that regards document  
24 requests 65 and 67, which are the same as request to Bellows  
25 Falls and I think to the Christian Congregation as documents



1 65 and 67. Maybe I mis-spoke there.

2 Okay. I think we're talking about 65 and 67 as  
3 far as you're concerned, Mr. Lynn, correct?

4 MR. LYNN: Yes. Yes.

5 THE COURT: And, however, with Bellows Falls  
6 Jehovah's Witnesses it's 66 and 67.

7 MR. LYNN: They are all nodding their head, Judge.

8 THE COURT: Right. And then back 65 and 67 to Mr.  
9 Carleton's client, right?

10 MR. CARLETON: That's correct, Your Honor.

11 THE COURT: All right. And let me just refresh my  
12 recollection, but 65 is the documents in response to a  
13 March 14, 1997 letter, correct?

14 MR. LYNN: Correct.

15 THE COURT: And then 67 is any documents  
16 referencing any allegations of sexual abuse of children  
17 within Jehovah's Witnesses Church since, within the church  
18 itself since 1960. And I think it was your response, Mr.  
19 Lynn, or response made to the motion that there are no  
20 documents involving the plaintiff, her parents, R.B., B.S.  
21 or True exist.

22 MR. LYNN: Correct.

23 THE COURT: Correct?

24 MR. LYNN: Correct.

25 THE COURT: And then your response to 67 was, any

1 documents that pertain to the plaintiff, her parents, sister  
2 Miranda or R.B. and B.S. and True have been produced or are  
3 on the privilege log, correct?

4 MR. LYNN: Correct. Yes.

5 THE COURT: Okay. So, go ahead.

6 MR. LYNN: The, as you can see, Your Honor, the  
7 issue, and let's start with 65 first since it is  
8 sequentially the first one that the Court encounters. There  
9 was a letter that was generated on March 14th, 1997. That  
10 letter is in the record. I'm sure the Court has had an  
11 opportunity to see it.

12 And essentially it was a request for information  
13 from the 14,400 congregations across this country to provide  
14 us with specific information around known child abusers.

15 And there were responses that were sent. I would  
16 tell the Court that the responses are kept electronically.  
17 And I think the Court saw the affidavit from Mr. Chapel  
18 which discusses how we try to access that information. A  
19 lot of it is very difficult to access because the terms  
20 child abuse are not used. But, in any event, there has been  
21 at least one court which, with redactions, has suggested we  
22 need to produce those materials. And as I understand it  
23 that is underway.

24 But, Your Honor, you saw there are two courts  
25 which were very clear that these were documents that went

1 beyond the scope of discovery, what ought to be proper  
2 discovery and declined to order production and granted a  
3 protective order, did not force us to provide that  
4 information.

5 We think that those courts, New Mexico and Ohio,  
6 got it right. And what I would suggest to the Judge, Your  
7 Honor, is that this is particularly true in light of the  
8 2015 revisions to Rule 26 and the scope of appropriate  
9 discovery.

10 As the Court knows, that having raised that very  
11 issue that, in fact, the scope of discovery seems to have  
12 narrowed significantly, particularly where a large volume of  
13 documents is being sought, where significant efforts have to  
14 be made.

15 Remember, Your Honor, we as counsel, will have to  
16 review all of those materials, make determinations  
17 independent of anyone else as to what is appropriately  
18 producible and what is not. And that is hours upon hours  
19 and hours of time.

20 Your Honor, even if we got by the issues of  
21 relevance under Rule 26, it is beyond the scope of  
22 appropriate discovery. It is not proportional to what is  
23 really at issue in this case. And what is really at issue  
24 in this case is what happened in Bellows Falls around  
25 Mr. True and around the Lewises.

1           And we have demonstrated our willingness to either  
2     produce those materials or provide a very significant  
3     description of them. In fact, produce them in-camera to the  
4     Court. There is no objection to those materials, if ordered  
5     by the Court, to produce them on the issue of relevance.

6           But, Your Honor, we have a very significant  
7     argument around the relevance of responses from New Mexico  
8     or responses from West Virginia about whether somebody has  
9     allegations of child abuse against them, particularly in  
10    light of the allegations or the liability claims that  
11    survive in this case.

12           And, of course, what I would ask the Court to do  
13    is to make a determination as to what is relevant  
14    information based on the liability claims that survive the  
15    motion to dismiss.

16           And I'm not going to articulate what those were  
17    again. But, Your Honor, there are very narrow claims that  
18    exist in this case after the motion to dismiss. And it will  
19    be a difficult task, near impossible task, for any  
20    convincing argument to be made that somehow these materials  
21    from Alaska, letters that came in in 1999 from Alaska in  
22    response to this 1997 letter somehow are relevant to these  
23    claims.

24           Now, the arguments raised by the plaintiff to  
25    support the production were as follows: They have to review

1 each one, they have to review all of these because it  
2 establishes the standard of care, that somehow what may have  
3 happened after the events in this case or 20 years before or  
4 in Alaska somehow will inform whether the people in Bellows  
5 Falls followed a policy which they allege was excellent,  
6 which was vigorous, zealous, watchfulness and care were  
7 there allegations of sexual abuse. And, Your Honor, we  
8 would argue to you that there is no conceivable relevance.

9           The second argument is that it will go to the  
10 reasonableness of the policies and procedures. But, Judge,  
11 their argument is we had great policies and procedures.  
12 That's not the issue in this case. The issue in this case  
13 is did we follow those policies and procedures.

14           The next argument is, was it the reasonableness of  
15 whether to accept the denials of Norton True. And, Your  
16 Honor, that argument makes no sense. Whether Norton True  
17 was convincing to the people in Bellows Falls, and  
18 parenthetically when he passed the two polygraph tests and  
19 convinced the state of Vermont to remove him from the sex  
20 offender registry, whether that was convincing or not has  
21 nothing to do with a letter we received from Alaska.

22           The next argument they raise is that it was --  
23 whether they need the documents to know whether it was  
24 reasonable to accept the recantation of another complainant  
25 who subsequently recanted. Your Honor, you saw the

1 materials, there was a woman named R.B. who raised initially  
2 allegations then withdrew the allegations against Mr. True  
3 and somehow, again, the argument is, by virtue of some three  
4 line or 10 line letter that doesn't give us the specifics  
5 from Indiana we're going to know whether the people in  
6 Bellows Falls acted appropriately in accepting the  
7 recantation from R.B.. But, Your Honor, again, the issue is  
8 here, whether we followed a policy that they say was  
9 vigorous and zealous.

10 And so, again, Your Honor, no relevance, no  
11 convincing argument as to why it would ever be relevant to  
12 the claims that are alive in this case.

13 And then the final argument is that somehow it is  
14 these materials with unlimited dates in which they were, the  
15 alleged acts occurred, unlimited in terms of the dates in  
16 which the correspondence was sent, but somehow they are  
17 relevant to the issue of punitive damages.

18 And as the Court well knows punitive damages  
19 focuses on the specific conduct directed to this plaintiff  
20 at the time of, up to the time of the alleged harm.

21 What happened, again, in California, or what  
22 happened in New Mexico, or what happened in Texas, Your  
23 Honor, has no bearing whatsoever to punitive damages in this  
24 case. It is our view, Your Honor, that these materials that  
25 are being sought are wholly irrelevant.

1           And then the next step is even if the Court were  
2     to order their production, Your Honor, consider for a moment  
3     the exercise we would have to go through in determining  
4     whether they ought to be produced or not. We would have to  
5     then begin an analysis of privilege on a state by state  
6     basis because each state has subtly, sometimes not so subtly  
7     different laws around what is privileged and what is not  
8     privileged.

9           We would have to consider third party interests.  
10    Remember, Your Honor, these documents will have the names of  
11    people who are accused of sexual abuse.

12           There's no indication that they have been -- in  
13    the documents there may or may not be any indication as to  
14    whether they've been convicted, whether the evidence is  
15    convincing or persuasive.

16           Your Honor, it is our perspective that these are a  
17    large volume of documents that have absolutely nothing to do  
18    with the issues central to this case.

19           And we think the courts in New Mexico and Ohio  
20    that have rejected this request are the ones who got it  
21    right. And the ones in California where, frankly, judges  
22    are elected, we think got it wrong.

23           THE COURT: So, again, just to make sure that I  
24    understand, you have already, that is, your client has  
25    already turned over everything, no, I'm sorry, you're saying

1 that you reviewed all your files and there are nothing  
2 involving this case?

3 MR. LYNN: Correct.

4 THE COURT: Okay.

5 MR. LYNN: Everything that relates to this case is  
6 either in the privilege log, which we submitted to the  
7 Court, or has already been produced.

8 THE COURT: All right.

9 MR. LYNN: And then, so as the Court is aware from  
10 the decisions from various judges around the country, 65 is  
11 not a new discovery request. Sixty-seven is. And our  
12 perspective is that this is sort of incrementally trying to  
13 expand the reach of discovery for the cases that plaintiff's  
14 law firm is pursuing throughout the country. And so they  
15 will, in cases in various forms, see if they can get more  
16 favorable rulings and expand the database that they have  
17 available to them in identifying potential claims.

18 And, Your Honor, that may or may not be true, but  
19 certainly is the perspective of a client who fails to  
20 understand how, I'm looking at 67 now, documents referencing  
21 allegations of sexual abuse of children since 1960. So  
22 almost 60 years, right, 60 years of documents they want us  
23 to produce without any showing whatsoever that it is  
24 relevant to any of the issues that matter in this case.

25 Judge, we believe --



1           THE COURT: Well, I can tell you I'm not going to  
2 do it to the 1960's.

3           MR. LYNN: Thank you. Thank you very much. And  
4 so, Your Honor, those are the arguments that we think are  
5 availing and persuasive.

6           THE COURT: Okay. Mr. Storey?

7           MR. STOREY: Good morning, Your Honor. Two quick  
8 points before jumping into the relevance issue. First, you  
9 know, there was the not so subtle insinuation that this  
10 request is solely to solicit new clients. And I'd note that  
11 we've repeatedly said, redact the names of the victims, we  
12 don't need it. We're clearly not seeking to solicit new  
13 clients. We've requested this information because we  
14 believe it's very relevant to the claims.

15           And, second, there were at various times  
16 representations that we believe Watchtower's policies are  
17 great or excellent. And I think the Court would be hard  
18 pressed to find anywhere in the complaint where we said the  
19 policies are great. We did allege that they failed to  
20 comply with the policy, but our position is not and never  
21 has been that these policies were great or the state of the  
22 art.

23           Now, with respect to these particular documents,  
24 there was some discussion about whether Watchtower has  
25 identified everything with respect to Norton True and the

1 plaintiff. And that --

2 THE COURT: Or has put it on their privilege log?

3 MR. STOREY: Or has put it on their privilege log,  
4 correct. And it's neither here nor there with respect to  
5 this particular request. This particular request number 65  
6 and 67 aren't specifically seeking information regarding  
7 Norton True. It's seeking to determine what did this  
8 organization know about molestation within its ranks  
9 generally.

10 So it's molestation explicitly by others other  
11 than True that we're seeking to get information about.

12 THE COURT: In other places?

13 MR. STOREY: In other places at other times, yes.

14 THE COURT: Why?

15 MR. STOREY: Well, a number of reasons. And first  
16 and foremost, the defense we have seen repeatedly from  
17 Watchtower and they've put on an expert in other cases, Dr.  
18 Monica Applewhite, and she's testified, look court, you have  
19 to, in determining the standard of care and determining  
20 whether the defendant acted reasonably, you need to look at  
21 what was known by society generally at the time of the  
22 abuse.

23 So, they don't want to look at today's standards.  
24 They want to look at what was known in, in this case, it  
25 would be 1991 through '94, sometime in that timeframe. And

1 that will be the testimony they put on.

2 They'll have an expert witness talking about what  
3 the state of the art was and the state of the societal  
4 knowledge was about child abuse. So --

5 THE COURT: Well, as it applies to Vermont, for  
6 instance, or Bellows Falls?

7 MR. STOREY: Well, they haven't limited that. You  
8 know, they've tried to put on testimony or at least their  
9 expert has testified in these cases that, you know, this is  
10 the state of societal awareness in the United States during  
11 these periods of time, so given that, Watchtower acted  
12 reasonably.

13 So, we've requested this information to combat  
14 that. To say, well, that's fine, it's well and good what  
15 society knew about molestation at that time, but what did  
16 Watchtower know? You know, did it act reasonably in light  
17 of the information available to it?

18 THE COURT: So that expert was able to testify I  
19 guess about that?

20 MR. STOREY: We didn't go to trial on either case,  
21 Your Honor. She gave the testimony and was designated. We  
22 deposed her.

23 THE COURT: So you don't know whether it would  
24 have been admitted by the judge?

25 MR. STOREY: We don't know if it would have been

1 admitted, correct. And I can tell you candidly that we  
2 would have mounted a vigorous motion in limine trying to  
3 keep it out, but regardless, there's the possibility that  
4 they offered that testimony.

5 THE COURT: Should that, should your argument be  
6 made at that point?

7 MR. STOREY: Well, what you're hearing from them  
8 is it's so difficult to produce. If we wait until that time  
9 and we're on the --

10 THE COURT: Well, it seems to me, it is a lot of  
11 stuff they'd have to try and find to look through.

12 MR. STOREY: Some of it yes, some of it no.

13 MR. LYNN: Your Honor, I hate to interrupt, but we  
14 did, in the pleadings, indicate to you that we will not be  
15 calling Dr. Applewhite in this case. So that issue is  
16 closed.

17 MR. STOREY: Your Honor, at the same time, they  
18 said we're not going to call that witness, but in the very  
19 next sentence they say, but you have to understand that what  
20 we know now is not the same. I mean, it's explicitly in the  
21 reply brief.

22 MR. LYNN: Well, I shouldn't interrupt Your Honor.

23 THE COURT: No, why don't you wait.

24 MR. LYNN: Sure.

25 MR. STOREY: I can get it for you in a moment. So

1 that's issue one on the relevance in terms of responding to  
2 this argument that we expect that they will make and have  
3 made repeatedly.

4           Secondarily, we have argued or the defendant has  
5 raised this issue of these actions that happened in this  
6 case specifically. For example, True. But he is accused  
7 multiple times of molesting children by R.B., by my clients.  
8 And there was a later accusation. Each time he denied it.  
9 And each time those accusations were accepted.

10           And to some extent Watchtower's experience in  
11 dealing with circumstances like this, where a person keeps  
12 skating on these allegations, is going to be relevant to  
13 deciding what they should have done in this circumstance.

14           You know, if they understand that their policies  
15 aren't sufficient to allow the Elders at the local level to  
16 get to the bottom of this stuff, and they are letting these  
17 molesters skate, and there are subsequent allegations, then  
18 we need to be able to look at whether Watchtower was  
19 reasonable in having the policies they had and taking the  
20 actions they had.

21           Additionally, we have a claim for punitive damages  
22 in this case. And this information is relevant to two  
23 specific aspects of punitive damages. First, to whether the  
24 defendant acted with malice and whether, or recklessness,  
25 and whether punitive damages are applicable or should be

1 imposed at all.

2 And the test there is whether there's conduct  
3 manifesting personal ill-will or carried out under  
4 circumstances evidencing insult or oppression or even by  
5 conduct showing a reckless or wanton disregard of one's  
6 rights.

7 So, in looking at that particular standard, if,  
8 for instance, these documents show that there were thousands  
9 of complaints of child molestation in the Jehovah's  
10 Witnesses, and they knew that it was a very substantial  
11 problem, but they didn't take action sufficient to curb it,  
12 that would be very relevant to our showing of reckless or  
13 wanton disregard of someone's rights.

14 Now, secondarily, there's an issue with respect to  
15 the valuation of punitive damages. And what the Court is  
16 saying, and this is Shahi versus Madden, the most important  
17 indicium of the reasonableness of a punitive damage award is  
18 the degree of reprehensibility of the defendant's conduct.  
19 And in Carptentier the Court said, in assessing the  
20 reprehensibility of a defendant's actions a jury may  
21 consider whether the conduct involved repeated actions or  
22 was an isolated event.

23 So, again, the extent to which molestation was  
24 prevalent within the organization would be relevant to  
25 determining the reprehensibility of Watchtower's action.

1           So for a number of reasons, the information we've  
2 requested is relevant, is reasonably calculated to lead to  
3 discovery of admissible evidence and this information should  
4 be produced.

5           Now, the defendants have also made an argument  
6 about the burden of producing it, that we're looking for a  
7 lot. And there's two responses to that. There's two  
8 separate requests here.

9           Now, in looking at request 65, which is the  
10 March 14th, 1997 responses, those documents are being  
11 gathered pursuant to a court order. They are incrementally  
12 being produced to my firm. They are subject to a protective  
13 order so I can't discuss what's in them, but we are getting  
14 them, Watchtower's producing them and will produce them.

15           So, there's no additional burden in requiring them  
16 to be produced in this case. There's no extra work that's  
17 going to go into it. It's the same documents. They are  
18 going to get turned over.

19           So, with respect to request 67, which is the  
20 broader request for all complaints dating back to 1960, and,  
21 you know, I'll start first with the reason for that request.  
22 You know, the document retention policy that was in effect  
23 at Watchtower up until 1997 didn't require this type of  
24 material to be kept forever. This type of information was  
25 kept for a period of time and could be discarded thereafter.

1 And the Branch Organization excerpts that we provided to the  
2 Court discuss the policy for going through the files every  
3 couple of years and getting rid of outdated material.

4 So, you have a circumstance where if we had simply  
5 requested, you know, the complaints dating back to 1960, a  
6 lot of things would be missing. So we asked for the second  
7 request, which was generated later, and were more complete  
8 with respect to certain aspects of the institutional  
9 awareness, dealing with Elders Administerial Servants.

10 So we've asked for both of these things to  
11 compliment each other, these requests, and to get the, you  
12 know, the most in-depth look at what Watchtower knew at  
13 various points in times prior to the molestation of the  
14 plaintiffs.

15 And, you know, I've heard the vigorous objection  
16 from the defendants over how could documents generated after  
17 the date of the abuse possibly be relevant. And it's going  
18 to be a mixed bag. Some of it's going to be. Some of those  
19 letters are going to refer to things that occurred earlier  
20 in time.

21 There will be, you know, people who were accused  
22 of abuse in 2001 or 2006 who had previously been accused and  
23 who that was known to the Watchtower or the local  
24 congregation.

25 So the date the document was generated isn't going



1 to immediately mean that it can't be relevant.

2 THE COURT: Okay?

3 MR. STOREY: Yes. Thank you, Your Honor.

4 MR. LYNN: Just a couple words, Judge?

5 THE COURT: All right.

6 MR. LYNN: First of all, this is, I didn't make  
7 this up. I'm looking now at the Court's ruling on the  
8 motion to dismiss based on the first amended complaint, page  
9 7. The first amended complaint alleges the congregation and  
10 Watchtower had a policy of vigilantly monitoring the  
11 reported molester for the safety and protection of children  
12 in the congregation.

13 I mean, this is the basis of their only claim that  
14 could ever possibly survive summary judgment because this  
15 ministerial servant issue is gone.

16 Judge, that is the narrow focus of this case. And  
17 to somehow suggest we need a complete picture from 1960 and,  
18 yes, it might be a mixed bag, meaning, that almost nothing  
19 will have any -- no, nothing will have any bearing on this  
20 case. Judge, that only illustrates the point I was trying  
21 to make earlier, which is, this searching for documents  
22 generally for purposes that have nothing to do with this  
23 case. There is nothing conceivably admissible about almost  
24 everything that they've asked for in 65 and 67. In fact,  
25 the things that are admissible and that could ever be

1 admissible are the things that we have produced.

2 THE COURT: So, Mr. Carleton, do you want to enter  
3 into this discussion?

4 MR. CARLETON: Very briefly.

5 THE COURT: Well, you can take as much time as you  
6 want.

7 MR. CARLETON: Thank you.

8 THE COURT: It was a long trip down here.

9 MR. CARLETON: So, Your Honor, I represent  
10 Christian Congregation of Jehovah's Witnesses or CCJW. I  
11 entered my appearance in this case on behalf of CCJW shortly  
12 after CCJW filed its motion for protective order.

13 So the only pleading that I've submitted to Your  
14 Honor is the one that was submitted on Friday. I'm going to  
15 try to be very brief because as I expected Attorney Lynn did  
16 a very good job of driving home the core issues of relevance  
17 and timing that we believe also preclude discovery request  
18 65 and 67 to CCJW.

19 Just because I'm not sure if the Court has a full  
20 picture of what CCJW is, let me take a minute to explain  
21 what the organization is.

22 In 2000 CCJW was incorporated really for spiritual  
23 reasons. The Watchtower, the world over, is associated with  
24 the publications that the Jehovah's Witnesses produce. And  
25 there was some concern that people were losing sight of the

1 fact that it was really a religion, and it's a spiritual  
2 organization.

3 So CCJW was incorporated and took over all of the  
4 communications back and forth between the congregations.  
5 And that was an effort to sort of, you know, highlight the  
6 fact that it was indeed a religion.

7 The only reason CCJW received a subpoena in this  
8 case was to recognize corporate formalities. It was at  
9 Attorney Lynn's suggestion in a letter dated September 17,  
10 2001 saying, hey, if we're going to argue over documents all  
11 the way up until the present date we need to honor the  
12 formalities of the corporations. Just send out that  
13 subpoena and we'll go from there.

14 So I'm positive that this Court has already seen  
15 beyond kind of the posturing that was in some of the  
16 pleadings. There's been no effort to hide documents.  
17 There's been no attempt to delay discovery. And there's  
18 been no attempt or there's been no refusal by CCJW to  
19 respond in any way to the subpoena.

20 CCJW did, in fact, respond on November, excuse me,  
21 November 20th, with responses, objections, production of  
22 documents and a privilege log. Okay. So we can set aside  
23 all of that.

24 Now, really the issue before the Court is the same  
25 one that was just argued a moment ago, which is whether 65

1 and 67 are appropriate requests for CCJW. And the issue  
2 there is simply one of timing.

3 The March 14th, 1997 letter went out exactly four  
4 full years before CCJW even began sending and receiving  
5 communications. You've heard over and over that the  
6 Jehovah's Witnesses are a disciplined organization. And  
7 that is indeed true.

8 In response to the 1997 letter, Judge, there was a  
9 flurry of responses from the 14,000 some odd congregations  
10 around the country. But that happened for 1997 and 1998.  
11 And that was a retro -- the '97 letter was a call for  
12 retrospective disclosures. In other words, what happened in  
13 the past, what do you know about people in the past that we  
14 should be concerned about.

15 What CCJW almost exclusively has received from  
16 2001 onward is reports from the congregations of activities  
17 and concerns and allegations that were happening currently,  
18 not retrospectively.

19 So the -- plus you have 15 years of them, from  
20 2001 to the present. So the notion that we would be called  
21 upon to find what we consider to be an irrelevant needle in  
22 the enormous haystack of correspondence, I mean, enormous,  
23 and difficult to search, as has already been explained, is  
24 just beyond the burdens that this Court should impose upon  
25 CCJW for the purposes that have been articulated by the

1 plaintiffs in this particular case.

2 THE COURT: So, I'm not sure I have your response  
3 here in front of me, but does CCJW --

4 MR. CARLETON: CCJW.

5 THE COURT: CCJW, do they have any documents  
6 regarding, again, through the other initials his, I'm sorry,  
7 her parents, R.B., B.S., so forth?

8 MR. CARLETON: Well, to the extent -- to the  
9 extent -- I'm sorry.

10 THE COURT: That are not on the privilege log of  
11 Watchtower or Bellows Falls?

12 MR. CARLETON: I do not -- I believe the answer to  
13 that question is no.

14 MR. STOREY: Your Honor, there was a separate, I'm  
15 sorry to step in here, there was a separate privilege log  
16 from CCJW.

17 THE COURT: Yes.

18 MR. STOREY: It identified, I believe, six or  
19 seven items.

20 MR. CARLETON: Correct.

21 MR. STOREY: It's not before you now. It will be  
22 the subject of a future motion, though this Court's order  
23 may head that off.

24 THE COURT: Okay. I guess I missed that.

25 MR. CARLETON: Yeah, so we filed our motion for

1 protective order. The plaintiffs responded to it, but  
2 didn't raise a separate issue concerning the six documents  
3 that are on that particular protective order.

4 THE COURT: Okay. So that's not at issue?

5 MR. CARLETON: That's not before the Court today,  
6 no.

7 THE COURT: All right. I can't deal with it I  
8 guess, huh?

9 MR. CARLETON: I'm sorry?

10 THE COURT: I can't deal with it? I don't want to  
11 have another one of these things.

12 MR. CARLETON: My guess is that Your Honor's  
13 rulings today will give guidance to the parties in such a  
14 way that we could probably take care of it ourselves.

15 THE COURT: Okay. All right.

16 MR. CARLETON: Understanding that the Court  
17 doesn't like to revisit the same issues over and over, but  
18 the bottom line is, to the extent that any of these issues  
19 of relevance, over breadth, undue burden, First Amendment  
20 privileges, religious privileges, all of those things apply  
21 to the Watchtower, they apply doubly to CCJW because the  
22 documents that are at issue there are just even further  
23 attenuated in time, Your Honor.

24 So we would ask for the Court to grant that  
25 portion of the protective order as part of its global ruling

1 today.

2 THE COURT: Okay.

3 MR. CARLETON: Thank you.

4 THE COURT: Thank you.

5 MR. STOREY: Your Honor, just, oh, I'm sorry.

6 MS. McDONALD: Go ahead.

7 MR. STOREY: Go ahead.

8 MS. McDONALD: I was just going to address whether  
9 you would like to take up Bellows Falls' motion for  
10 protective order separately or whether we should just keep  
11 going back and forth?

12 THE COURT: Well, the issues are the same, are  
13 they not, except your response is different, of course?

14 MS. McDONALD: The issues, the issues are the  
15 same. Our response is slightly different, although  
16 obviously it raises all the same issues that have already  
17 been discussed.

18 THE COURT: Right. I think you responded to  
19 the -- well, it was a little different, maybe we ought to  
20 take it after I hear from Mr. Story on Watchtower. Then  
21 we'll take yours up.

22 MS. McDONALD: Certainly, Your Honor.

23 MR. LYNN: On Watchtower, Your Honor, or on CCJW?

24 THE COURT: Well, we've heard, we've heard from  
25 both of you, correct?

1           MR. LYNN: Right. I thought that Mr. Storey has  
2 already responded to everything from Watchtower. Of course,  
3 he can say more.

4           THE COURT: All right. Well, why don't we take  
5 Mr. Storey first and then we'll deal with the issue of  
6 Bellows Falls. How's that?

7           MR. LYNN: Thanks. Sounds good, Judge.

8           MR. STOREY: Thank you, Your Honor. Just very  
9 briefly. With respect to Watchtower, in the reply brief  
10 page four of five, there had been, you know, a statement  
11 that they were going, not going to offer Dr. Applewood as an  
12 expert in this case.

13           Plaintiff, next two sentences at the top of page  
14 five, plaintiff says Watchtower will ultimately defend that  
15 it knows more about child abuse now than it did in 1990.  
16 Today's knowledge is no defense to what should have been  
17 done in 1990, regardless of what was known about child abuse  
18 then.

19           So, again, they are talking about -- even when in  
20 one sentence they're saying we're not going to use Dr.  
21 Applewhite, the very next sentence they come back and say  
22 that today's knowledge is no defense to what should have  
23 been done then.

24           So, we need to figure out what they knew then to  
25 be able to figure out what they should have done and whether



1 their actions were reasonable. And that's the point.

2 Now, with respect to, there was quite a bit of  
3 comment earlier indicating that the time period was not  
4 going to go back to 1960.

5 THE COURT: It seems to me that's awfully long.

6 MR. STOREY: Sure. And what I would recommend  
7 perhaps is Norton True was made a Ministerial Servant in  
8 1976. And perhaps that's a good start date, taking it up  
9 from 1976 through the time of the molestation in this case.

10 It's a substantially truncated period of time with  
11 a direct tie to the events in this case.

12 THE COURT: I'm sorry, could you tell me again  
13 what he became?

14 MR. STOREY: A Ministerial Servant. So that's an  
15 appointed position functioning below the Elders in the  
16 congregation. But it seems that that's a reasonable time  
17 period time to the case that maybe would, would fit the  
18 circumstances a little bit better than the request. Thank  
19 you.

20 THE COURT: Okay. Miss McDonald?

21 MS. McDONALD: Attorney Storey's argument is a  
22 good seg-way into our motion. So the Bellows Falls joined  
23 in Watchtower's motion for protective order. Obviously the  
24 issues on relevancy and religious privilege and the third  
25 party privacy interests of our congregants and the Elders at

1 the congregation are certainly the same as the arguments  
2 articulated by Attorney Lynn and Attorney Carleton.

3 What I would like to specifically address to the  
4 Court first is that with respect to number 66, that was the  
5 request for the 1997 letter, those did not submit any  
6 responses to that letter. So there are no documents in  
7 response to number 66.

8 THE COURT: All right.

9 MS. McDONALD: As to number 67, and I believe this  
10 is Attorney Storey's suggestion that documents from 1976,  
11 starting when Norton True was appointed as Ministerial  
12 Servant to, I believe, the present concerning all  
13 allegations of abuse whatsoever, I think that's his  
14 suggestion of narrowing the scope of that request.

15 We obviously, we would object to, we object to  
16 producing any documents in response to that and suggest that  
17 that suggested revised scope does not resolve the relevancy  
18 issues that we have here.

19 THE COURT: How about if it's limited to  
20 allegations against Mr. True?

21 MS. McDONALD: Could you say that again, Your  
22 Honor?

23 THE COURT: How about if it's limited to  
24 allegations against Mr. True since 1976?

25 MS. McDONALD: I believe that we produced or

1 identified in the privilege log all documents that would be  
2 responsive to any such requests. So, again, I think that  
3 kind of takes us outside the 67 request. And it addresses  
4 the other ones that we've already talked about in response  
5 to the motion to compel.

6 THE COURT: I'm sorry, is it 76 or 67?

7 MS. McDONALD: Sixty-seven. My apologies.  
8 Seventy-six I believe was the date suggested for the revised  
9 scope of --

10 THE COURT: Right.

11 MS. McDONALD: -- the disclosure.

12 THE COURT: And, I'm sorry, where do we get 67?

13 MS. McDONALD: Sixty-seven is the request for all  
14 documents concerning allegations from 1960 onward that  
15 Attorney Storey has now revised to 1976.

16 One issue, and this is particular I think to  
17 Bellows Falls and Watchtower as well, is that they request  
18 these all allegations. There's no limit to known abusers,  
19 there's no limit to individuals who have been convicted,  
20 individuals who have been present before a judicial  
21 committee, which is the biblically based process set in  
22 place by the Jehovah's Witnesses.

23 This is all allegations. They may very we will be  
24 unsubstantiated allegations. They may be allegations that  
25 were determined to have been false. This is such a broad

1 request. It has nothing to do with the issues that are in  
2 play in this case which is, first, what was the nature of  
3 the relationship between Mr. True and the congregation and  
4 the relationship between Mr. True and the plaintiff. And  
5 then what defendants knew about Mr. True. The request is  
6 far broader than that and I don't think has any relevancy  
7 and certainly raises the privacy interests that we've  
8 already discussed.

9 And I think that, that, the absence of that  
10 connection is the reason that even this revised scope is  
11 just absolutely beyond anything that would be proportional  
12 for producing in discovery in this case, Your Honor.

13 And, again, I think to discuss, as I anticipate  
14 Attorney Storey is also going to mention, the punitive  
15 damages claim in this case. I'm particularly concerned with  
16 the request for the allegations because, again, that doesn't  
17 say what we knew because these allegations not limited at  
18 all may very well be unsubstantiated.

19 And then it gets into essentially a trial within a  
20 trial about whether these prior allegations concerning  
21 individuals that have really no other bearing on this case,  
22 whether those were substantiated or not, another rush to put  
23 us on notice of any issues within the congregation.

24 It certainly, it's, you know, not only does it not  
25 have to do with anyone in this case, but trying to bring

1 into this case allegations that may very well have been  
2 completely unsubstantiated I think is, again, beyond the  
3 scope of anything that we should ever be required to  
4 produce. Thank you, Your Honor.

5 THE COURT: Okay. You get to go again.

6 MR. STOREY: Sure. Thank you. Just very briefly  
7 in response, Your Honor. There were some arguments there  
8 about third party privacy and maybe some of these things,  
9 allegations were made, but they weren't substantiated. But,  
10 again, all of that can be protected with the protective  
11 order that the Court had spoken about earlier. Preventing  
12 disclosure of any of this material is going to prevent a  
13 harm from coming from the production.

14 So, I would argue that any third party privacy  
15 issues really shouldn't move the needle here or cause any  
16 change in or prevent production anyway, because they are  
17 going to be protected by the confidentiality agreement.  
18 Thank you.

19 THE COURT: Okay.

20 MS. McDONALD: Your Honor, briefly in response to  
21 that? I think that that misses the point of the commonality  
22 order and it also misses the point of my argument, which is  
23 these very well may be unsubstantiated allegations, but  
24 absent criminal convictions there's simply no way for a  
25 confidentiality order to protect that information or to --

1 THE COURT: Well, again, if it's a confidentiality  
2 order between all of you, it doesn't go beyond that.

3 MS. McDONALD: The issue I think is also then it  
4 gets to determining whether or not these allegations are  
5 substantiated, which also goes to -- we get into these  
6 little mini trials from this trial as to each document that  
7 would be produced. And I think, again, the absence of any  
8 relevancy and any issues that may cause weighs heavily in  
9 favor of not producing those documents.

10 THE COURT: All right. Well, but as we know,  
11 we're not talking about a trial, we're talking about  
12 discovery at this point. So --

13 MS. McDONALD: Yes, Your Honor.

14 THE COURT: -- some of what you're saying may be  
15 true if it comes to a trial.

16 MS. McDONALD: Thank you.

17 THE COURT: Okay. Anybody else want to enter into  
18 the discussion about these motions? All right.

19 So, I think this is an easy one. There's a motion  
20 that was filed by both defendants, the congregation and  
21 Watchtower, back on October 5 asking the Court to compel  
22 certain discovery. There was no response by the plaintiff.  
23 The Court didn't do anything. But then all these other  
24 motions came in. So I assume this is mute. Would I be  
25 right?

1 MR. JUDGE: No, Your Honor. It's not mute.  
2 Sorry, Your Honor. Walter Judge on behalf of Bellows Falls  
3 Congregation.

4 THE COURT: Right.

5 MR. JUDGE: I can understand Your Honor's  
6 perspective, which is that since it hasn't been responded to  
7 perhaps it's just sufficient for the Court to order a  
8 blanket discovery order.

9 And if that's what the Court is inclined to do  
10 then I don't need to argue the specifics of what we're  
11 looking for and what hasn't been produced, but I was  
12 prepared to talk to Your Honor about what hasn't been  
13 produced that we've requested.

14 THE COURT: Well, what about your recent motion?  
15 I'm talking about the recent one you filed. I'm talking  
16 about an old one.

17 MR. JUDGE: Oh, no. No. Yes, you're absolutely  
18 correct, Your Honor. You're absolutely correct. That one  
19 was mute.

20 THE COURT: All right. So that was easy.

21 MR. JUDGE: That was easier than I made it.  
22 That's for sure.

23 THE COURT: Okay. So that's document 65 filed on  
24 October 5 of '15. And that was a joint motion to compel.  
25 And the Court is ruling that that is mute at this point.

1 Okay?

2 MR. JUDGE: Thank you, Your Honor.

3 THE COURT: All right. So, yes, you are correct,  
4 you do have a motion that was filed relatively recently.  
5 And it was responded to recently. In fact, I think  
6 yesterday.

7 So, you want to go ahead and argue it?

8 MR. JUDGE: Sure. Yes. Thank you, Your Honor.  
9 Is it acceptable to the Court if I argue from counsel table?

10 THE COURT: Fine.

11 MR. JUDGE: Okay. So, Your Honor, here's what we  
12 still don't have. We don't have any medical records from  
13 Ms. Lewis from age four to age 21. It is the defendant's  
14 position that those medical records must exist somewhere.

15 We don't have the identification of plaintiff's  
16 childhood pediatricians or primary care providers during  
17 that period. We don't have the dates when she was treated  
18 by any of the medical doctors, counselors or therapists. We  
19 don't have any identification of all of the various, quote,  
20 friends that plaintiff has spoken to about her abuse over  
21 the years that she's admitted that she's spoken to.

22 We don't have any therapy or counseling records at  
23 all from before this lawsuit was filed in October of 2014.  
24 We don't have any journals or diaries, even though plaintiff  
25 admits that she kept at least one. And we don't have any



1 texts, e-mails, social media, etcetera, etcetera.

2 Now, we're talking about someone who is currently  
3 28 years old. I don't know if Ms. Lewis is different from  
4 everyone else on the planet, but everyone else on the planet  
5 at that age sends a thousand texts a day, a thousand e-mails  
6 a day and checks their Facebook status a thousand times a  
7 day. We don't have anything.

8 So, let me just elaborate a bit. In plaintiff's  
9 answer to her, to interrogatory number four she states that  
10 she told, quote, various friends about the alleged  
11 molestation. We've been asking counsel for weeks to  
12 identify some of those people and so far it hasn't happened.

13 And this is particularly frustrating because just  
14 a few days ago she produced a series of what appeared to be  
15 heavily redacted Facebook messages about the alleged  
16 molestation. And we quickly tried to go through those  
17 before today's hearing and they mention, they talk about the  
18 alleged molestation and this case that she was going to  
19 bring with her brother -- her sister Jenny and her brother  
20 Keith, Junior and some other unknown people whose names  
21 appear in the texts, but we've never been provided with any  
22 of that information about who they are and how they can be  
23 contacted. And we've been asking for that for weeks.

24 As I said, the plaintiff has not produced any  
25 information about her childhood doctors. Now, in this kind

1 of case, Your Honor, that information would obviously be  
2 relevant. We're talking about abuse that, according to the  
3 plaintiff, occurred some time between '91 and '94 when she  
4 was between the ages of four and seven. And now she's 28  
5 years old.

6 So, obviously any medical records from her  
7 childhood would be extremely relevant to whether the abuse  
8 happened, did she ever talk to her doctors about it, did her  
9 mother ever talk to the doctors about it, did the doctors  
10 ever report it, did the doctors ever recommend therapy, did  
11 the doctors do anything about it.

12 Not only do we not have a single medical record  
13 between ages four and 18, but we don't even have the name of  
14 the plaintiff's pediatrician. Now, I'm 55. I remember the  
15 name of my childhood pediatrician. I went to him every year  
16 so on and so forth.

17 We're talking about a 28 year old person. If she  
18 can't remember the name of her pediatrician then her mother  
19 can. And if her mother can't her father can.

20 And if none of those people can remember the name  
21 of her pediatrician then her sisters can because they  
22 probably went to the same childhood pediatrician. Someone  
23 can remember the name of the childhood pediatrician. But we  
24 are being told that she can't remember who it was. That's  
25 not credible.

1           In the opposition that was filed yesterday that  
2     the Court just alluded to, counsel says that quote, most of  
3     her childhood providers report having no records. Well, we  
4     would like to know who those childhood providers are that  
5     are being referenced because we've never been given the  
6     names of any of those people.

7           Also in that opposition counsel says that  
8     defendants are free to subpoena those childhood care  
9     providers. Well, you can't send a subpoena if you don't  
10    know who they are, number one. And, number two, counsel  
11    knows very well that we can send a subpoena to anyone we  
12    want and they are not going to send us any records without a  
13    signed authorization from the plaintiff, which they refuse  
14    to provide.

15          In the heavily redacted Facebook notes, the  
16    handful of notes that plaintiff produced just a few days  
17    ago, they show that she was planning her lawsuit in January  
18    of 2014, if not earlier. But that's the first note in which  
19    she mentions that she's about to file a lawsuit or that  
20    she's going to file a lawsuit.

21          So I would respectfully suggest that that's two  
22    years ago. And if steps had been taken when the plaintiff  
23    acknowledges that she was going to file a lawsuit in this  
24    case to preserve records, medical records, therapy records,  
25    and so on and so forth, those records might exist now.

1 We're being told that those records don't exist.

2 For example, the plaintiff acknowledges in her  
3 interrogatory responses that at age 14 she went to see a Dr.  
4 Belcher-Timme, a therapist. She was planning her lawsuit in  
5 January of 2014. We are now told that Dr. Belcher-Timme's  
6 therapy records were destroyed within the last year.

7 Those are the only records that plaintiff says in  
8 which the, in which she sought therapy before she filed this  
9 lawsuit. And now those records are apparently destroyed.

10 We also have the plaintiff's statements that she  
11 attended family counseling therapy with her mother, and  
12 possibly others, in 1996 when the parents were getting  
13 divorced.

14 And, by the way, I should add that what we're  
15 talking about when we're talking about these 1996 records,  
16 and all the medical records that apparently don't exist or  
17 plaintiff doesn't know the name of her pediatrician, as I  
18 said, those records would obviously be relevant in any case  
19 in which a plaintiff is claiming childhood sexual abuse and  
20 she's now an adult.

21 But in this case we have 1996 allegations, not  
22 allegations, but we have 1996 a father arrested for abusing  
23 the children. We have 1996 mother and father going through  
24 divorce proceedings. And we have the mother's allegation in  
25 1996, the mother's acknowledgment in '96 that one of her own

1 therapy patients who was living in her home sexually  
2 molested her children.

3 Now, if that doesn't make childhood medical and  
4 therapy records relevant I don't know what does. So, so we  
5 have no therapy records that pre-exist this lawsuit. We  
6 have a claim that they don't know who the plaintiff's  
7 childhood medical care provider was. And we have no  
8 records. And we are being told that the records of Dr.  
9 Belcher-Timme have been recently destroyed. And we have the  
10 family counseling from 1996 at which Annessa, the plaintiff  
11 in this case, was present and in which apparently there was  
12 discussion about the abuse that Annessa was alleging. And  
13 the plaintiffs refused to produce those records because the  
14 mother won't raise, won't waive the privilege for the  
15 release of those records.

16 So records we are being told are the only existing  
17 pre-lawsuit counseling records that involve Annessa. They  
18 should be produced.

19 The mother took part in the press conference that  
20 was delivered in plaintiff's counsel's office in October,  
21 October 1st, September 30th, 2014, promoting this lawsuit  
22 and announcing this lawsuit.

23 The mother is a promoter of this lawsuit. We do  
24 not think that it's fair for her to stand on her claim of  
25 privilege as to family counseling records which Annessa was

1 present and the abuse was allegedly discussed.

2 And if the other plaintiff Miranda was also there  
3 at this counseling, at these counseling sessions in 1996  
4 that breaks the privilege even further.

5 So we don't think, given that these are the only  
6 therapy records, only that the plaintiff that we are being  
7 told that exist prior to this lawsuit being filed. We don't  
8 think that we should have to suffice with redacted records  
9 from those family counseling sessions.

10 We think those family counseling records, which  
11 apparently still exist, which is interesting because you've  
12 got a therapist who still has his records from 1996. And  
13 then you've got a therapist who saw Annessa alone much later  
14 in time and those records have already been destroyed.

15 But in any case, the 1996 records for the family  
16 counseling should be produced in full. That's our position.

17 THE COURT: All right.

18 MR. O'NEILL: Your Honor, we're pleased for  
19 Mr. Judge that he lead a life that permitted him to be able  
20 to remember who his pediatrician is because he got regular  
21 pediatrician visits having wished on every child that exists  
22 on the planet going as far back as one can go. That's not  
23 true of the plaintiff in this case.

24 She led a chaotic life. The assault that has just  
25 been referenced here --

1           THE COURT: Well, she must have seen a doctor at  
2 some point?

3           MR. O'NEILL: Oh, she did. But it was chaotic, it  
4 was irregular. She has given us the names of practices that  
5 she believes she went to. We've talked to her mother. We  
6 tried to chase them down. And we don't just sit on our  
7 hands and when we get, for example, so and so is no longer  
8 in practice. We asked the question, where are the records.  
9 And we go to that source and try to find the records.

10           We've gone, we've chased down every lead that we  
11 have. We have a new lead on a doctor who our best guess,  
12 based upon something in Google, he's about 90 years old.  
13 And we now think we know where his records, if they existed,  
14 were kept. We're going to try to get those.

15           We don't have any disagreement about the  
16 relevancy. There's no issue about that. We concur  
17 entirely. We're glad to try to find the records. We have  
18 identified providers. We have said specifically, we tried  
19 this place, they called us up and said no records. We tried  
20 this place, they called us up and said no records.

21           Now, Dr. Timme, who has been referenced, I  
22 haven't -- this is the first I've heard about her destroying  
23 records within the last year. I was accused of --

24           THE COURT: I think he was talking about  
25 Belcher-Timme.

1           MR. O'NEILL: Belcher-Timme, exactly. Well, we  
2 were accused of having delayed. We requested the records  
3 before suit was filed. We can't produce records that don't  
4 exist. If they exist, my attitude with respect to records  
5 is very simple, either you produce them, you make every  
6 effort to get them, we have and we will continue to do so.  
7 If we can't get them we'll just so state.

8           If there's an instance where they want to depose a  
9 particular entity and that entity says with an order to be  
10 deposed you need a release from the client, we'll give it to  
11 them. We're not going to hand out blanket releases. I've  
12 seen them abused in the past. But in terms of getting  
13 records we'll get any that we can.

14           Let's spend a moment talking about this therapy  
15 session. The fact is that defendant Bellows Falls says we  
16 should get those records, we're entitled to those records,  
17 completely ignores privilege. There's a privilege with  
18 respect to them. It's a counseling privilege of the  
19 litigation on this issue and if they want to go ahead and  
20 file a motion to compel and cite the authorities I will be  
21 glad to respond to it. We have asked for, and I'm told  
22 we're going to get --

23           THE COURT: Privilege between whom?

24           MR. O'NEILL: The mother, who this was primarily  
25 for the mother, the children were there some of the time for



1 counseling. So it's joint counseling amongst the children  
2 and with the mother.

3 We've talked to the therapist. And what the  
4 therapist has said that he can get for us, and we've asked  
5 him to get for us, is his, in his words, heavily redacted  
6 notes that will show the parts that relate specifically to  
7 the daughters where they are involved in some part. He is  
8 the one who told us, and I agree with him, that he cannot  
9 produce without authorization from the mother, who has no  
10 interest in giving it, the records of her work that she did  
11 in connection with the therapy.

12 Privileges exist to block the flow of information.

13 THE COURT: Well, have you turned that over yet?

14 MR. O'NEILL: No, we don't have it yet, Judge.

15 We're getting it from him. If we could find a record, all  
16 the records going back to childhood, anything we can find  
17 we'll turn over. We've asked our client. We've worked with  
18 the client. We'll continue to do so. We're not trying to  
19 hide any information. I've never hidden any information in  
20 my life. I'm not about to start now.

21 THE COURT: Well, it is kind of curious, frankly,  
22 that the suit's been filed two years and you are still  
23 trying to find information. I mean, you must have had some  
24 before you filed suit.

25 MR. O'NEILL: We didn't have any medical records

1 before we filed suit, Judge. No. We didn't have any  
2 medical records. We did request some, but we haven't had  
3 any luck in getting virtually anything. There is a  
4 physician that she's seeing, excuse me, I think it's a, I  
5 may be wrong on this one, Dr. Jere, J-e-r-e, who has given  
6 us a summary. And we said a summary doesn't count, we need  
7 the records, get us the records.

8           So he's down in Dallas, she, excuse me, down in  
9 Dallas. I expect we'll have those sooner than later. I  
10 would be happy to have an order from the Court, if you want  
11 to give us an order that says, and I'll stick to the dates,  
12 you have to produce this information by, let's say, January  
13 30th, because it would be of some help to me in getting some  
14 momentum and getting pieces like that done and out of the  
15 way.

16           But, otherwise, I can't produce what doesn't  
17 exist. I mean, whether or not defense counsel feels it's  
18 not credible is not the issue with respect to it.

19           Now, I heard something said there that I scratched  
20 my head when it was first stated, all this about how text  
21 messages, there are no texts, no e-mails, no Facebook, and  
22 these people are on it all the time. Well, some people are.  
23 Some people are not. But in the same breath a few minutes  
24 later, just as I was scratching that down I heard, but  
25 they've turned over all these redacted pages related to

1 Facebook. There is one text that she has that she provided  
2 that relates to this. We turned it over.

3 The Facebook is redacted. There's no question.  
4 She doesn't have to put her entire life, anyone does, so  
5 it's the equivalent of going through say I want to see all  
6 the mail, physical mail you've received over this period of  
7 time.

8 She used search terms. She went back through and  
9 searched through it. I personally looked at every one of  
10 those and made decisions about whether or not it was  
11 something that fell within the scope. And if in doubt I  
12 said, yes, and we turned it over.

13 The problem with things like Facebook is you take  
14 a look at something and you say, well, there's got to be  
15 something missing here. And there may be, but digitally  
16 it's not there. It doesn't exist.

17 We've turned over, I want to say, over a hundred  
18 pages of documents relating to Facebook postings and  
19 comments that she's gotten. I've put them so that if there  
20 is a comment that she has made in any context they get what  
21 was said from someone else so that the information is there  
22 and it's available.

23 We have done our best to and will continue to try  
24 to go ahead and provide the information that's sought. We  
25 can't produce that which does not exist.

1           Let's see if there's something, there was one  
2 other thing. Things like, they must exist somewhere. Well,  
3 they don't must exist somewhere. They don't exist at least  
4 we've been able to find it. If we can find it, Judge, we'll  
5 either do one of two things. Either we'll turn it over or  
6 we'll identify it to the other side if there is a reason why  
7 it would not be produced. And I have in mind sometimes I've  
8 gotten in medical records that are wholly unrelated to the  
9 subject, but identified to the other side and said, if you  
10 want to file a motion to compel do so. I don't think that  
11 will be necessary here because I don't think we're going to  
12 turn up anything that falls into that category. But if it  
13 exists I'm glad to find it, glad to go ahead and turn it  
14 over.

15           We need to get back to them with respect to other  
16 people as to whom she thinks she may have discussed this.  
17 The Facebook postings are of some help with respect to it,  
18 but it's a broad scope of people and we'll try to add to  
19 what that is, but I don't think there's any more to add.  
20 That's essentially our position, Judge. Thank you.

21           THE COURT: All right. Mr. Judge?

22           MR. JUDGE: Your Honor, briefly. Again, with all  
23 due respect to plaintiff's counsel, if -- I just, I can't  
24 believe that no one in plaintiff's family can remember who  
25 her childhood pediatrician was. And if she had more than

1 one that no one in her family can remember who they were.

2 Problem number two, we have asked the plaintiff to  
3 give us a signed authorization so that we can chase down the  
4 records. The plaintiff refuses to do that.

5 I've been doing this for 20, 23 years, Your Honor.  
6 And my experience is if you ask a hospital for a record or  
7 you ask a doctor's office for a record and it's old and it's  
8 a lot of work to dig through the files and find it, they  
9 tell you they don't exist. If you pursue them they do  
10 eventually appear.

11 Now, in the case of Ms. Lewis, if she was on Dr.  
12 Dinosaur Medicaid may have the records. If she was on Blue  
13 Cross Blue Shield they may have the records. Her mother may  
14 still have some of the records in her own personal files.  
15 The idea that this girl from age four to 21 is a blank slate  
16 medically it's not feasible, Your Honor.

17 Dr. Laflure is, I believe, no, excuse me, Dr.  
18 Roberts is the current therapist she has seen. She has been  
19 seeing that therapist since March of 2015, five months after  
20 this lawsuit was filed.

21 What we have from Dr. Laflure, excuse me, Dr.  
22 Jones, is only a summary of his interpretation of the notes  
23 he took of her treatment. We should be entitled to the  
24 notes at least.

25 THE COURT: I think he said he was going to get

1     them.

2                 MR. O'NEILL:   Yeah, absolutely.

3                 MR. JUDGE:   What I thought I heard him say was  
4     that they were going to be redacted.   But if he's going to  
5     get the full notes that's fine.

6                 MR. O'NEILL:   No, we'll get -- we made it clear  
7     that that summary is not acceptable.   We want the full  
8     notes.

9                 MR. JUDGE:   And as for the Facebook thing, Your  
10    Honor, or the Instagram thing or text messaging or e-mails  
11    or G-mails or Google mail, Instagram, whatever, we've been  
12    given, as of two days ago, three days ago, a handful of  
13    heavily redacted messages back and forth between her and her  
14    sister and her brother K.J., Keith Lewis, Junior.

15                We, you can't tell that those are from Facebook.  
16    Everything is redacted except a shorthand full of notes that  
17    the plaintiff has decided are relevant.   Where's the rest of  
18    the Facebook page?   Where is the rest of these notes?   And  
19    what was the basis for the redaction?   There was no  
20    privilege log submitted.   So, you know, you might have to  
21    say that they've given us her Facebook page.   That's not  
22    true.

23                We have no e-mails whatsoever.   None.   And we have  
24    no texts whatsoever.   We have essentially no social media  
25    whatsoever.   We think that we should be given access to her

1 Facebook page.

2           The notes that we got yesterday or two days ago  
3 include a note back and forth between her and one of her  
4 friends in which she said, oh, I'm about to file a lawsuit,  
5 And this was January 2014, against those darn Jehovah's  
6 Witnesses. And the response that she got from her friend  
7 was, hey, you better turn your Facebook page private. And  
8 the very next thing from Annessa to her friend was, oh,  
9 that's a good idea. I'm going to do that now.

10           Why should we suddenly be foreclosed from knowing  
11 what this woman's life was as she described it on Facebook  
12 suddenly because she files a lawsuit?

13           MR. O'NEILL: Judge, I'm not sure what planet  
14 we're on here. Turning a Facebook page private doesn't  
15 delete a thing. All it means is that it's limited as to who  
16 can see it. It doesn't mean that you can't -- the material  
17 is gone. You're hearing things, to be direct, certainly not  
18 true.

19           For example, there was an instance, and I forgot  
20 about this one, excuse me for going back to it, where she  
21 hasn't produced the diary. We know there's at least one  
22 diary. We identified the diary. We said there was a diary  
23 she kept. And it's the name of a website that keeps  
24 diaries. And she, in 2012, before we ever got within a mile  
25 of this, decided she didn't want it, she didn't want it seen

1 so she cut off the account.

2 We said to her, okay, what you need to do is go  
3 back to them and see if they still have it. Do they still  
4 have it archived. She's trying to do that. We're trying to  
5 locate it. We're not saying it doesn't exist.

6 As it relates to the pediatrician, she has  
7 different medical practices that she thinks that she went  
8 to. Her life was chaotic. So she went to various  
9 practices. She thinks she knows who she went to. We've  
10 tried to locate each of those practices. We're trying to  
11 chase them down. We contact them. They have no records.  
12 They don't have anything. Maybe it's because they don't  
13 exist, maybe it's because she didn't go there. We'll give  
14 the names to the other side. They can subpoena those  
15 practices, which is the best way to do it --

16 THE COURT: Why not give them an authorization?

17 MR. O'NEILL: Because I've seen authorizations be  
18 abused, Your Honor. And if the Court wants us to give an  
19 authorization the only request I have with respect to it is  
20 that it be addressed to a specific practice. In other  
21 words, if we can identify a practice or through any other  
22 method that's possible to where if they say, we want one for  
23 a particular practice, I'm glad to get them an authorization  
24 directed to that specific practice.

25 I just am concerned about authorizations for my



1 client's medical records being misused in some respect.

2 THE COURT: Well, how are they going to be  
3 misused?

4 MR. O'NEILL: Well, because they could, for  
5 example, request gynecological records, that sort of thing.  
6 Those aren't relevant in any way to these proceedings. I  
7 mean, it's this suggestion that, you know, we have got  
8 heavily redacted Facebook, we don't have any e-mail, those  
9 Facebook postings, from what I can see, are not Facebook  
10 postings. They are all e-mail. Entirely e-mail within  
11 Facebook.

12 No texts. They got one text. The only text that  
13 exists that is referenced specifically in the material that  
14 we turned over. We're turning over the material. The  
15 Facebook material is chaotic. From what I can gather, and I  
16 haven't been on Facebook in two years, it's the nature of  
17 Facebook.

18 I've looked at some of these. I've seen the whole  
19 page. I can see the date, I can see the time, I can see the  
20 sequence going through and they just don't flow necessarily.  
21 But the fact that she, that this is the nature of what it  
22 is, if the question was, okay, we want to see every letter  
23 you've written and received since, pick a date, January 1,  
24 2000 just to pick one out of the air, Your Honor wouldn't  
25 order that. You wouldn't say she has to turn everything

1 that she's corresponded about.

2 What you would say legitimately is that she has to  
3 turn over all the references that relate to her mental  
4 health, that relate to sexual abuse, that relate to  
5 Jehovah's Witnesses.

6 I've gone through those. I had a paralegal go  
7 through them. Highlighted, took a look and said, what do we  
8 have here. We've turned over anything at all that relates  
9 to it. It's the nature of the beast that it's going to be  
10 somewhat chaotic. There just isn't any way around it. But  
11 we have turned over the material. We'll continue to turn  
12 over the material. This isn't hide the ball. I don't like  
13 that.

14 THE COURT: Well, I think it's time that I do give  
15 you an order and that is to respond to their requests by the  
16 end of this month. And that means getting the names of  
17 doctors, any, if it's the Facebook page that they are  
18 looking for, I'm not familiar with Facebook myself, but --

19 MR. O'NEILL: It speaks well of you.

20 THE COURT: Pardon me?

21 MR. O'NEILL: It speaks well of you.

22 THE COURT: And any of the other issues. Frankly,  
23 it seems to me incredulous that you don't have some of this  
24 information now, two years after the lawsuit.

25 MR. O'NEILL: I understand, Your Honor.

1           THE COURT: And we're trying to move this along.  
2       It's getting bogged down like some other cases I've got  
3       that, you know, by the time I retire it may be another judge  
4       who is going to hear this case.

5           MR. O'NEILL: I don't really disagree about the  
6       substance of what the Court is saying at all, Your Honor.  
7       We have been diligent. We'll continue to. I appreciate the  
8       end of the month. We will continue to pursue them. We're  
9       diligent about it ourselves. And we'll be even more so.  
10      And I appreciate the order because it gives me the  
11      opportunity to say, for example, to the doctor in Dallas,  
12      look, I've got a federal judge telling me your redacted  
13      document doesn't do it, give me the whole thing.

14           THE COURT: Right.

15           MR. O'NEILL: I'm grateful for that.

16           MR. JUDGE: Your Honor, let me talk a little bit  
17      about a signed medical authorization. So what we're hearing  
18      is, you know, Mr. Judge, if my client can remember a  
19      particular medical practice that she went to, geese, you  
20      know, I call them up and they tell me they have no records  
21      so what else do you want?

22                   What if she can't remember a medical practice or a  
23      hospital or something that she went to, if we give them a  
24      subpoena with an authorization and we get records low and  
25      behold in the Bellows Falls area.

1           Saying that we can -- Mr. Judge, you can just  
2   serve subpoenas on the people that we've identified. You  
3   haven't identified anyone to us. And you've already told us  
4   that the people that you can remember don't have any  
5   records. And, three, we're not going to give you signed  
6   medical records authorization anyway. No one is going to  
7   produce records without a signed medical authorization, Your  
8   Honor.

9           THE COURT: Well, he said he's going to for those  
10   that can be identified. He has identified any, as you said.  
11   So --

12           MR. O'NEILL: Well, we have identified some,  
13   Judge. We have identified some. And we've used  
14   authorizations to try and obtain the records. In this one  
15   instance, Dr. Timme, who they would like to take the  
16   deposition of to verify when her records were destroyed, she  
17   wants an authorization from our client. We said, fine, no  
18   problem, so that she can be deposed.

19           Anybody they want to depose, if they want a  
20   specific authorization for that provider glad to give it to  
21   them. It's no hardship.

22           THE COURT: Go ahead.

23           MR. JUDGE: We need to know who they are in order  
24   to get an authorization.

25           THE COURT: Right.

1 MR. O'NEILL: So do we.

2 THE COURT: Well, he's going to do that.

3 MR. O'NEILL: It's the best we can do.

4 THE COURT: By the end of the month.

5 MR. LYNN: And, Judge, we've got our own motion,  
6 but to the extent -- this goes beyond the instant motion.  
7 Then the question becomes, all right, so when do we finally  
8 get the information that we're entitled to so that we can  
9 take the deposition of the plaintiff in Vermont.

10 Now, I know that's an issue, right. We've been  
11 told from the outset until yesterday that that deposition  
12 has to take place in Texas. We now, I think, have agreement  
13 that that's going to take place in Vermont, but if not I  
14 want that issue decided now so we don't have to come back  
15 and bother Your Honor again with whether a plaintiff filing  
16 in Vermont around issues that happened in Vermont has to  
17 come to Vermont for a deposition.

18 MR. O'NEILL: Judge, we've always found ways to  
19 work our way through these kind of issues. I haven't said,  
20 that no, it has to happen in Texas. Yes, it can happen in  
21 Vermont.

22 For example, let's assume for purposes of  
23 conversation that they --

24 THE COURT: If she filed the lawsuit here in  
25 Vermont she's going to come here. If they want her to come

1 here she'll come here.

2 MR. O'NEILL: So be it. Understood.

3 THE COURT: Okay?

4 MR. O'NEILL: Absolutely. My suggestion about it  
5 to the other side was, and I understand the Court's order  
6 with respect to it if that's what it's to be, if they were  
7 going to be down there doing some other depositions we could  
8 do it there. If they want to do it here we'll bring her  
9 here. No problem.

10 THE COURT: All right. That resolves that.

11 MR. LYNN: Thank you, Your Honor.

12 MR. JUDGE: Thank you, Your Honor.

13 THE COURT: So, let's get all that, all those  
14 names together by the end of the month and provide  
15 authorizations to the defendants for those people that you  
16 identify. And, you know, move it along. I mean, this is  
17 getting to be a little much, frankly. I don't want to hear  
18 any more of these motions.

19 MR. JUDGE: I agree, Your Honor. And in light of  
20 what has just taken place, I think we're going to have to  
21 extend the current discovery schedule.

22 THE COURT: That's what I was going to discuss  
23 next.

24 MR. STOREY: Your Honor, before we move on to  
25 that?

1 THE COURT: Yes.

2 MR. STOREY: You have indicated that you don't  
3 want to hear any more of these motions. Just, as a matter  
4 of where we are, there had been a subpoena to Christian  
5 Congregation of Jehovah's Witnesses. And they indicated  
6 they had six or seven documents on a privilege log. I  
7 assume it's all of the same things the Court just heard and  
8 we may be able to work that out amongst ourselves.

9 THE COURT: Okay.

10 MR. STOREY: But it's possible that that would be  
11 an issue. And there's another subpoena to congregation,  
12 another congregation that also has a couple of documents.

13 So some of these issues are going to come back up.  
14 I'm just making the Court aware of it.

15 THE COURT: All right. But, I mean, we may not  
16 have another hearing because, frankly, if it's the same sort  
17 of argument that's being made then we'll decide it on the  
18 papers.

19 MR. STOREY: Understood. Thank you, Your Honor.

20 MR. O'NEILL: That's fine with us, Judge.

21 THE COURT: All right. So I'm not sure we can  
22 work out this discovery order now, but it certainly, looking  
23 at it before I came on the bench, it's, there's no way you  
24 can comply with some of these things.

25 So what I will do is, hopefully I'll be able to

1 get out an order about the discovery issues. I'm not going  
2 to do anything about your request, Mr. Judge, because I  
3 think I dealt with it. I hope that ends it. But as far as  
4 the other motions we'll try to get an order out, what's  
5 today, Tuesday, by the end of the week certainly.

6 So, then you'll have an idea of what I'm ordering.  
7 I'm going to tell you ahead of time, however, that the order  
8 will include the confidentiality agreement that's ordered by  
9 the Court. So knowing that, I would order that that  
10 agreement by the parties be submitted to the Court by the  
11 15th of this month. And then that should, in connection  
12 with my order, should at least move along the discovery as  
13 far as the opposition so far.

14 So, let's see, so that deals with requests in  
15 discovery at this point. I don't know if there's going to  
16 be more discovery, but it's, I believe it says that -- no,  
17 it doesn't. It doesn't mention when actually the discovery  
18 is supposed to be answered. But you've got, for instance,  
19 depositions taking place in November of last year. I assume  
20 those didn't take place.

21 MR. LYNN: You're correct, Your Honor.

22 THE COURT: Have there been any depositions?

23 MR. LYNN: No, Judge.

24 MR. STOREY: No, Your Honor. There have been two  
25 or three, Your Honor.



1 MR. LYNN: I'm sorry, two, Your Honor of the  
2 paleographers.

3 THE COURT: The what?

4 MR. LYNN: Paleographers.

5 THE COURT: Oh. All right. So, well, I think  
6 that probably the parties ought to sit down and figure out  
7 what you can, how you can modify this. Because for me to  
8 try to go through it at this point is probably --

9 MR. O'NEILL: I was going to suggest, Judge, that  
10 we can work through this.

11 THE COURT: All right. So --

12 MR. LYNN: I expect so, Your Honor.

13 THE COURT: -- why don't you submit that order by  
14 the 15th as well.

15 MR. LYNN: Thank you, Your Honor.

16 THE COURT: All right?

17 MR. LYNN: Yes.

18 THE COURT: And hopefully it won't carry this case  
19 into the next century.

20 MR. JUDGE: At the risk of doing exactly that,  
21 Your Honor, can I just raise one minor point, which is, for  
22 clarification purposes, on the Court's order from the bench  
23 on our motion to compel.

24 THE COURT: Yes.

25 MR. JUDGE: Can we clarify that that include her

1 entire Facebook page, please?

2 MR. O'NEILL: Absolutely not, Your Honor. I mean,  
3 this is, it is the equivalent of going back in someone's  
4 life and saying, I want all of your correspondence that goes  
5 back over a period of time. There are things that are  
6 relevant and they are entitled to those. I'm glad to give  
7 them to them. No hesitancy. But turning over everything  
8 that exists with respect to one's life, if we're going to  
9 deal with that issue, I really would like to brief that  
10 issue because I think the law's completely to the contrary  
11 with respect to it. If the Court would even entertain it I  
12 would really like to brief the issue.

13 THE COURT: Well, I'm not prepared to order that  
14 her -- see I'm not familiar, frankly, with Facebook. I  
15 don't know what's there and what isn't. Whether it goes  
16 back to whenever you started the page.

17 MR. JUDGE: Facebook goes back to 2004. And we  
18 assume this woman probably started a Facebook page in 2008  
19 or some -- she was in college from 2008 to 2012. Every  
20 college kid has a Facebook page.

21 What she -- what her -- hundreds of friends are  
22 allowed to know about her life. And everyone in her family  
23 is on her Facebook page. Why is that excluded from us, the  
24 defendants in this case?

25 THE COURT: Well, I expect the argument is there

1 are certain privacy matters.

2 MR. JUDGE: A privacy that she's disseminating to  
3 potentially hundreds of people?

4 THE COURT: Well, not, not certainly about any  
5 issues in this case, but --

6 MR. JUDGE: Well, I'll give you an example, only  
7 because Your Honor says that he's not terribly familiar with  
8 Facebook, and I can understand that. Facebook users post --  
9 the typical Facebook user posts on a daily or a weekly basis  
10 what they've been up to. This is what I did today, I went  
11 horseback riding. Here's a picture of me on the horse.  
12 Whatever.

13 How is that not relevant to her claim that her  
14 life has been destroyed by an incident in 1991, '92 and '93?

15 MR. O'NEILL: Your Honor, we all have moments of  
16 difficulty in our lives. We all have moments of going well.  
17 The fact that someone is having a good time riding a horse,  
18 I don't think she rides a horse, doesn't mean that she's not  
19 damaged in some respect.

20 The same way going back through someone's life and  
21 looking through letters that they may have written that  
22 talks about parts of their lives. Discovery that's relevant  
23 here should be provided. The pages, the e-mail messages  
24 back and forth on Facebook we have provided with respect to  
25 it. But it doesn't mean that there has to be a wholesale

1 invasion of someone's life.

2 She isn't saying this destroyed her life. She's  
3 married. She has a child. She has a job. She's going  
4 through life and dealing with it. She's got difficult  
5 issues. We're prepared and have provided anything that  
6 relates to the childhood sexual abuse or the Jehovah's  
7 Witnesses has been brought forth. And if we find something  
8 more we'll bring it forth. We'll try to get the diaries  
9 that I indicated, for example.

10 MR. JUDGE: Here's the problem, Your Honor. When  
11 they say we'll produce anything from her Facebook page that  
12 talks about abuse or that talks about Jehovah's Witnesses,  
13 they omit everything in her life that is relevant that  
14 doesn't talk about abuse or Jehovah's Witnesses.

15 A Facebook page is the modern equivalent of anyone  
16 whose under the age of 50, or whatever, of a diary of your  
17 life. That is relevant. And if Your Honor is not prepared  
18 to order it now then I want to brief that issue on why the  
19 Court should order her to turn that over.

20 THE COURT: Well, what do you have now?

21 MR. O'NEILL: What I have right now, Judge, is we  
22 have -- Facebook, as I was involved in it, what I get has  
23 basically two components essentially. One is what people  
24 post to there all the time on their public page or their  
25 private page. They can limit who sees it, however they want

1 to go about it.

2 And then there are e-mails, think of it as  
3 texting, if you will, that people use within Facebook to  
4 communicate with other people.

5 What we have done is, we asked her to go through,  
6 and she did searches using various search terms that would  
7 indicate anything to do with, for example, sexual abuse, the  
8 Jehovah's Witnesses, mental health issues, those kinds of  
9 things.

10 And if they want us -- if they've got some more  
11 terms they want us to use I'm glad to use those to search.  
12 The search found those and they are actually showing up  
13 highlighted in the material that we've turned over.

14 So all of those e-mails, if you will, I think  
15 that's a fair way to describe them, that relate in any way  
16 to this in a broad sense, we have produced. So those we  
17 have turned over. So we --

18 THE COURT: So, what about the first part you  
19 talked about?

20 MR. O'NEILL: I don't think there's anything there  
21 that relates to it, Judge, but I will double back check with  
22 her to make sure.

23 In fact, what I'll do is I will ask her for us to  
24 have an authorization so we can take a look through it. So  
25 that way there isn't any confusion with respect to what it

1 is.

2 We'll take a look at it ourselves and go back  
3 through and see what's there.

4 THE COURT: So you don't even have that at all?

5 MR. O'NEILL: No, I don't typically ask the  
6 clients for access to it, but I will ask her for access to  
7 it and see what's there. If there is something that is  
8 germane in some respect, falls within the scope of discovery  
9 as defined here we'll turn it over.

10 MR. JUDGE: And we will want to know in connection  
11 with that, and certainly an order in connection with that,  
12 whether, when she filed this lawsuit in October 1st, 2014,  
13 or going back to when her notes say that she was about to  
14 file this lawsuit in January 2014, have you deleted anything  
15 from your Facebook page and don't delete anything from your  
16 Facebook page.

17 But, Your Honor, my basic position is that the  
18 plaintiff should not get to decide from the diary, the  
19 online diary of plaintiff's life that only the few messages  
20 or days when she's having a bad day and she's blaming it on  
21 the Jehovah's Witnesses only that's relevant to us. No.  
22 For the 10 bad days that she has according to her Facebook  
23 page and the thousand good days that she has, both are  
24 relevant.

25 THE COURT: Well, first, what I would order is

1 that you obtain, either on your own or through her, the  
2 Facebook page, which I guess includes not e-mails and so  
3 forth, but what she posts, right?

4 MR. O'NEILL: True. And what other people post on  
5 it, Judge.

6 THE COURT: What other people post.

7 MR. O'NEILL: Sure.

8 THE COURT: And either provide that to counsel,  
9 which I think you probably don't want to do, or provide it  
10 to the Court for an in-camera inspection and I'll determine,  
11 frankly, whether all or some of it should be turned over.

12 MR. O'NEILL: Sure.

13 THE COURT: All right?

14 MR. O'NEILL: Absolutely.

15 THE COURT: So let's do that by the 30th.

16 MR. O'NEILL: Should not be a problem, Judge. The  
17 only -- I might have to ask for a little latitude on that  
18 because sometimes getting it out of Facebook can be an  
19 issue. Let's leave it at the 30th and if there's a problem  
20 we'll come back to the Court. We'll work very hard so that  
21 it's not an issue. Shouldn't be.

22 THE COURT: All right. Okay. That it? Okay.

23 So, again, submit the confidentiality order by the  
24 15th. And also a revised discovery order. And then the  
25 plaintiff is going to turn over, do what I ordered by the

1 30th. Okay?

2 MR. STOREY: Thank you, Your Honor.

3 MR. LYNN: Thank you, Your Honor.

4 MR. JUDGE: Thank you, Your Honor.

5 MR. O'NEILL: Thank you, Your Honor.

6 (The Court recessed at 12:54 p.m.)

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## C E R T I F I C A T E

I, Anne Marie Henry, Official Court Reporter for the United States District Court, for the District of Vermont, do hereby certify that the foregoing pages are a true and accurate transcription of the taped proceedings in the aforementioned matter to the best of my skill and ability.

A handwritten signature in cursive script that reads "Anne Marie Henry". The signature is written in black ink and is positioned above a horizontal line.

Anne Marie Henry, RPR  
Official Court Reporter